Acta Sanctae Sedis

Acts of the Holy See

Holy See; Vatican

An English translation of the Latin edition
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[*Latin ed. p. 1*]

THE ACTS OF THE HOLY SEE, CONCISELY PRESENTED AND ILLUSTRATED WITH CARE, BY VICTOR PIAZZESI, DOCTOR OF BOTH LAWS, OR, The Acts, juridical and emanating directly from the Supreme Roman Pontiff, which are among those that can be made public under the law, whether they are Decrees, Instructions, Responses, or other similar matters; especially, expositions and resolutions of cases from the various Sacred Congregations of Cardinals, carefully compiled to promote a thorough understanding and observance of ecclesiastical law: and finally, other juridical matters, by which those things which may present difficulty in the aforementioned acts, or which further contribute to the knowledge of the current law, are suitably explained; for the benefit of those who diligently study the laws of the Church, and who labor diligently in the governance of the Christian flock, or in cultivating the Lord's vineyard.

ROME, FROM THE PRINTING PRESS OF THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH, MDCCLXXVIII.

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[*Latin ed. p. 3*]

3 Letters from the Most Holy Pope Leo XIII to the Bishops of Ireland, in which he laments the new stirrings of spirits, as if contrary to the profession of the Christian name. Venerable Brothers, greetings and the Apostolic Blessing. Often We have, from this height of the apostolic office, brought cares and thoughts to your Catholic citizens; and Our sentiments have been publicly expressed in letters, from which, to everyone without doubt, it will appear how deeply We are affected by Ireland. — In addition to those things which, in previous years, the Sacred Council, by Our authority, provided for Ireland in the propagation of the Christian name, enough is said in the letters which We have given once and again to the Venerable Brother Cardinal MacCabe, Archbishop of Dublin; and also in the prayer which We recently offered for not a few of the Catholics of your nation, from whom We received not only congratulations and wishes for Our safety, but also a sign of grateful hearts for the perceived favor We have for the Irish. — In these very recent months, when it has seemed fitting to erect a temple in this venerable city in honor of Patrick, the great Apostle of the Irish, We have gladly supported the plan, and We intend to help as much as We

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can. Now, however, while this paternal charity remains with Us, We cannot conceal that grave and distressing things are being reported from this place. We understand an unexpected stirring of spirits, arising suddenly, because it has begun to be widely used, under the pretext of a "campaign" and "boycott," that method of fighting which the Sacred Council has decreed it is not permissible to use to vindicate the Church from the wicked. — And it is more to be lamented that not a few insist on calling the people to turbulent assemblies, in which inconsiderate and dangerous opinions are promoted, and no respect is shown to the authority of the decree; which is twisted with interpretations far removed from what it truly means. Indeed, they deny that the duty of obedience arises from it, as if it were not truly and properly the Church's task to judge of the honesty and dishonesty of human actions. — This manner of acting is very far from the profession of the Christian name, of which...

[*Latin ed. p. 4*]

4. These letters are accompanied by virtues such as moderation, modesty, and obedience to legitimate authority. Furthermore, it does not befit us, in a just cause, to appear to imitate those men who, though seeking what is not rightfully theirs, contend with such vehemence to obtain it. — And these matters are all the more serious, because We have carefully examined everything, so that We might thoroughly and without error ascertain the state of affairs and the causes of the grievances of your people. We have authorities in whom we can rightly place trust; We have questioned you yourselves; and, moreover, last year We sent a virtuous and upright man to you, who investigated the truth with the utmost care and reported it faithfully to Us. — And, in particular, the people of Hibernia have taken care to publicly offer Us thanks for this concern. Is it therefore not rashness that they claim that We have judged the matter without sufficient knowledge? Especially since We have condemned actions in which just men, those not involved in this dispute, agree, and who, with a more balanced judgment, consider the matters at hand. It is also unfair to suspect that We are not deeply concerned about the cause of Hibernia, and that We do not earnestly strive for the well-being of your people. On the contrary, the condition of the Hibernians affects Us more than anyone else; and We desire nothing so much as that they may one day enjoy tranquility and deserved prosperity. We have never refused to support those who contend for better things; but is it permissible that, in this contention, the door be opened to wrongdoing? Indeed, precisely because, amidst the passions and political factions, right and wrong are intertwined in the same cause. We have consistently striven to deter Catholics from anything that is dishonest, and from all things that Christian morality does not approve. — Therefore, We have urged the Hibernians, in timely counsel, to remember their Catholic profession, to undertake nothing that is ever contrary to natural honesty, and to accept

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nothing that is not permitted by divine law. — Therefore, the recent decree should not have come as a surprise to them; indeed, even more so, because you yourselves, "Venerable Brothers, assembled in Dublin in the year 1881, instructed the clergy and the people to avoid whatever is contrary to public order, such as refusing to render what is rightfully due, refusing to be rendered what is due, violating the person or property of anyone, opposing the laws, or even those who perform public duties, entering into secret agreements, and other things of the same kind. These precepts, full of equity and most opportune, were praised and approved by Us."

[*Latin ed. p. 5*]

LETTERS. Nevertheless, since the people were swept away by the persistent fervor of desires, and since there were those who daily introduced new and harmful practices, we understood that more defined instructions were required than those which we had previously given, generally, concerning the preservation of justice and charity. It forbade us, as pastors, to allow so many Catholic people, whose salvation is primarily entrusted to us, to tread a path that was steep and slippery, which would rather lead to ruin than to the alleviation of miseries. Therefore, the matter must be considered with truth, and let that which we are about to decree be recognized by you in Ireland as being born of our love and as being conducive to the desired prosperity, because, however just the causes may be, nothing hinders them more than being defended by force and injustice. These things which we write to you, Venerable Brothers, let Ireland know through your teaching. We are confident that, with concord of sentiments and wills, as is fitting, and supported not only by your authority but also by ours, you will achieve much: especially that the darkness of desires may no longer obscure the truth, and that those who incite the people may bitterly regret having acted so rashly. Since many seem to be seeking reasons to abandon their duties or to engage in the most certain forms of cupidity, take care that no room remains for doubt regarding the force of this decree. Let all understand that no reason whatsoever, which we have forbidden, is permitted to be used. Let them seek honest advantages honestly, and above all, as befits Christians, with justice and obedience to the Holy See: in these virtues, Ireland has always found solace and strength of spirit. In the meantime, as a pledge of heavenly blessings and as a witness of our benevolence, we impart to you, Venerable Brothers, and to the clergy and people of Ireland, our apostolic blessing, fervently in the Lord. Given at Rome, at St. Peter's, on the twenty-fourth day of June, in the year 1888, in the eleventh year of our pontificate. LEO XIII.

[*Latin ed. p. 6*]

6. HIS HOLINESS, Pope Leo XIII, by his own authority, has decreed the allocation of one hundred thousand Italian silver coins to the Belgian

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College in Rome, so that seven young men may be supported there perpetually. As many pleasant memories of things pertaining to Belgium have taken root in our heart, we are especially pleased to remember the most honorable order of the clergy. — We once had the opportunity to become acquainted with Belgian priests, and we did not lack time or place to observe their discipline, intelligence, and charity. These virtues remained in them, and, if it pleases God, they will remain perennial and lasting, especially because we know that bishops diligently devote themselves to the seminaries of priests, never neglecting any duty, so that the students are properly instructed.

Nevertheless, since there is a greater and greater opportunity for zealous priests daily, and the utmost vigilance is required to ensure that their number is continuously replenished with younger men, we wish to offer some assistance to the prudent efforts of the bishops in this matter, so that our old benevolence towards the Belgians may be clearly demonstrated. We believe that the best place to accomplish this is in the Belgian College, to which we ourselves, when serving as legate to Belgium, contributed somewhat. And this is indeed a good omen, for the College, of which we speak, has produced worthy results for more than forty years, and gives constant hope of producing similar results. It has been proven that many men have come forth from it, enriched in virtue and doctrine, trained in sacred knowledge, and who have been and are useful and diligent in assisting in the works of the bishops and in performing priestly duties. From this, it is confirmed how beneficial it is that several priests should be educated within its walls and sent to the Catholic nations.

For these reasons, to the aforementioned College, we grant, in addition to the one hundred thousand Italian silver coins, the following: that from the annual income of this sum, seven young men, of Belgian nationality, who show good promise in both mind and character, and who aspire to the priesthood, shall be supported and educated perpetually, without charge. We wish that the Belgian bishops select and send these young men; the Archbishop of Mechlin shall send two, one of whom shall be chosen from among the students of philosophy at the renowned Lyceum of Louvain, with the opinion of the doctors of that faculty being requested.

Given in Rome, at St. Peter's, on the tenth day of July, in the year 1888, in the eleventh year of Our Pontificate.

LEO XIII, POPE.

[*Latin ed. p. 7*]

7. Agreements concluded between the Holy See and the Republic of Colombia. In the Name of the Most Holy and undivided Trinity. His Holiness the Supreme Pontiff Leo XIII and the most excellent President of

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the Republic of Colombia, Lord Raphael Nuñes, having named their respective plenipotentiaries; His Holiness, the most eminent Lord Marianus Rampolla del Tindaro, Cardinal Priest of the Holy Cecilia, his Minister for public affairs; and the President of the Republic, the most excellent Lord Joachim Ferdinand Vélez, Extraordinary Envoy and Minister with full powers, to the Apostolic See. Who, after having mutually exchanged the instruments of their respective powers, agreed upon the following articles.

Article 1. The Catholic, Apostolic, Roman religion is the religion of the Republic of Colombia; the public authority recognizes it as an essential element by which the order of society is constituted, and binds itself to support and protect it, and to preserve it in the enjoyment and exercise of its rights and privileges.

Article 2. The Catholic Church enjoys full and complete freedom and independence from the political power; therefore, it will not, in any way, interfere, so that it may freely exercise its spiritual authority and ecclesiastical jurisdiction, and may govern and administer itself according to its own laws.

Article 3. The laws of the Church are distinct from civil law, and do not constitute a part of it; but the magistrates of the Republic will respect them solemnly in honor and reverence.

Article 4. The State recognizes that the Church, represented by its legitimate authorities and hierarchical orders, truly and properly has a legal person, and the capacity to enjoy and exercise the rights that belong to it.

Article 5. The Church possesses the right, by just title, to acquire, freely to possess, and to administer, both movable and immovable property, according to the norms established by common law; and its acquired property and foundations are inviolable, no less than the property of the citizens of the Republic.

Article 6. The property of the Church may be subject to public taxes, as well as the property of other citizens; except for buildings dedicated to divine worship, conciliar seminaries, and the residences of Bishops and Pastors.

[*Latin ed. p. 8*]

8. AGREEMENTS, etc. concerning the houses of religious, which shall be exempt from taxes, and which may never be occupied or added to for other purposes. Article 7. Secular and regular clergy shall not be required to perform public duties that are contrary to their sacred ministry or their way of life; moreover, they shall be perpetually exempt from any military service. Article 8. The Government of the Republic is obligated by law to attach conditions to the laws that regulate penal judgments, in order to safeguard the dignity of the priesthood, whenever a minister of the Church is involved in a criminal process for any reason whatsoever. Article 9. It

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is incumbent upon the local Ordinaries and parish priests to collect from the faithful offerings and ecclesiastical revenues according to the norms of canon law, and in a just and equitable manner, whether these are based on ancient custom in any diocese, or on work performed in the sacred ministry; however, in order that the acts and obligations arising from such sources may have force under civil law, and that secular authority may exercise its authority, the local Ordinaries shall communicate their plans to the Government. Article 10. Regular orders and religious societies of both sexes may freely be established and founded in the Republic of Colombia, provided that the canonical erection of these orders and societies is accompanied by the authority of legitimate ecclesiastical power. These religious orders and societies shall be governed and administered according to their own laws and constitutions; however, in order that they may enjoy legal rights, and in order to be protected and assisted by the laws of the Republic, they must present to civil authority a certificate of canonical approval granted to them by the respective ecclesiastical authority. Article 11. The Holy See will provide assistance and cooperation to the Government in order that religious orders may be established in the Republic of Colombia, which are especially dedicated to works of charity, missions, the education of young people, and general instruction, as well as other works of public utility and beneficence. Article 12. In universities, colleges, schools, and other institutions of learning, public instruction must be in accordance with the dogmas, morals, and teachings of the Holy Catholic Church, and must be adorned by them. In all these branches of study, religious instruction must be instituted, and exercises in the same pious and Catholic religion shall be frequent. Article 13. Therefore, the respective local Ordinaries shall have the right to...

[*Latin ed. p. 9*]

CHAPTER 9. CONVENTIONS, ETC.

9. The Holy See, either directly or through specially appointed delegates within the aforementioned institutions of learning, shall have the power to inspect, and shall also review, with regard to matters pertaining to the doctrine of the faith and morals, the books which are used as texts. The Archbishop of BogotÃ¡ shall designate the books or texts which must be read in the Universities, for the purpose of imparting knowledge of religion and morals; and in order that the instruction in these disciplines may be uniform, the same Archbishop, after consulting with other local Ordinaries, shall select the books which are to be used as texts in other public academies. The Government shall take care to ensure that in the humanities and sciences, and in the teaching of all kinds of disciplines, opinions are not disseminated which are contrary to Catholic dogmas, and to the due reverence and veneration owed to the Church.

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Article 14. If it should happen that professors or lecturers of religion or morals teach, contrary to the decrees and prescriptions of the Government, doctrines which are not in accordance with the Catholic faith, the local Ordinary shall be empowered to deprive them of the power to teach.

Article 15. The right of the Archbishop and Bishops to appoint individuals to vacant churches is a proper and exclusive right of the Holy See. Nevertheless, in order to demonstrate special consideration, and to ensure that peace and harmony are maintained between the Church and the civil government, the Holy See agrees that, before making an appointment, the opinion of the President of the Republic shall be sought as to whether the person to be appointed is acceptable to him; and the provision of Episcopal and Archdiocesan sees shall be carried out accordingly. Therefore, when a see becomes vacant, the President of the Republic may directly recommend to the Holy See those ecclesiastical men who appear to possess all the qualities necessary for the proper discharge of the episcopal office. Conversely, the Holy See, before appointing a Bishop, shall always inform the President of the names of the candidates it intends to consider, in order that he may determine whether any of the candidates have reasons, whether of a civil or political nature, which might make their persons less acceptable. Care shall be taken to ensure that the provision of vacant sees is carried out as quickly as possible, and that it shall not be delayed for more than six months.

Article 16. The Holy See shall establish new dioceses, and shall also define the boundaries of the same, when the necessity or utility of the faithful so requires; but it shall consult with the Government, and shall receive with due consideration and approval the just and appropriate observations of the same.

Article 17. In order that the marriage of all those who profess the Catholic religion may have civil effects, as regards the persons and property of the contracting parties and their offspring, according to the form prescribed by the Council of Trent.

[*Latin ed. p. 10*]

10. PACTA CONVENTA, etc. It shall be necessary to ensure that the prescribed contract is fulfilled. The official celebration, as established by law, will be present solely for the purpose of continuously registering the marriage in the public records; however, the case of the celebration of marriage at the point of death is excepted, in which case, if it cannot easily be fulfilled, such legal formalities may be omitted and supplemented with subsidiary proofs. It shall be the responsibility of the contracting parties to ensure that the official civil status is present at the marriage celebration; the parish priest, however, will limit his actions to ensuring that the obligation imposed by civil law on the contracting parties is duly and publicly fulfilled. Article 18. With regard to marriages which have been celebrated at any time in accordance with the prescriptions of the Council of Trent, and which are

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to have civil effects, the subsidiary proofs emanating from ecclesiastical authority shall be considered the most valid. Article 19. The ecclesiastical authority shall alone be competent to judge matters concerning the bond of marriage and the cohabitation of spouses, as well as the validity of betrothals; civil effects of marriage shall be referred to the secular judge. Article 20. The armed forces of the Republic shall enjoy the exemptions and privileges which are known under the general name of "privileges of Castrum," and which shall be separately determined by the Holy See. Article 21. After the Divine Office, in all temples of the Republic, the following prayer shall be recited: "Lord, save the Republic; Lord, save the President thereof, and his supreme authorities." Article 22. The Government of the Republic shall henceforth perpetually recognize, as a public status name and debt (commonly: consolidated debt), the value of the redeemed censuses in favor of the public treasury, as well as the public assets (commonly: amortized assets), which formerly belonged to Churches, pious associations, benefices, chapels, and institutions of instruction and beneficence administered by the Church, and which have been inscribed under the names of the public treasury at any time. The fate of such assets (commonly: recognized debt) shall yield an annual interest of three and a half percent, payable every six months. Article 23. The revenues derived from benefices, chapels, associations, and other private foundations shall be directly added to and accounted for by those who, according to the statutes of the foundations, have the right to demand them, or by those legitimately delegated by them. Their payment, as provided in the preceding article, shall be made without any deduction, starting from the year 1888. In the case of any of the...

[*Latin ed. p. 11*]

ARTICLES CONCERNING AGREEMENTS, ETC. Should the aforementioned foundations cease to exist, after due deliberation and counsel between ecclesiastical authorities and the Government, the revenues pertaining to them shall be dedicated to works of piety and beneficence, but nothing shall ever be done contrary to the will of the founders.

Article 24. The Holy See, considering the present state of the Columbian Fund, and attentive to the benefit that will accrue to the Church from the observance of this agreement, remits and forgives the following to the Republic:

a) The value of shares, until now in no way recognized, of public bonds (commonly known as "amortized") which, for the most part, pertained to the aforementioned institutions or religious societies of both sexes, and which are not included in the preceding articles.

b) The sums owed by ecclesiastical institutions for unpaid revenues or fruits whose due date has passed, or for other reasons arising from the publication [of this agreement], up to December 31st of the current year,

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Article 25. In compensation for this benefit, the Government undertakes to add, once and for all, a fixed sum annually to the Columbian Fund, which is currently established at one million Columbian scudi; and, as the condition of the Fund improves, an equal amount will be added, in such a manner and by such means as shall be agreed upon between the two authorities, in order to assist dioceses, chapters, seminaries, missions, and other similar works, by which the Church leads peoples to a more virtuous life.

Article 26. The religious members of the dissolved societies shall continue to enjoy the revenues that were previously assigned to them by law for their support and other necessities of life, as long as they remain alive.

Article 27. In the same manner, revenues and other allocations previously assigned for the maintenance of divine worship in churches, chapels, and other religious places, which are not included in Article 22, shall remain in effect. In the event that doubts or difficulties arise concerning this matter, the Government shall communicate with the competent ecclesiastical authority, so that what is proper may be determined.

Article 28. The Government shall restore to the ecclesiastical institutions the public assets that pertain to them, which are found to have not been assigned or dedicated to any particular use. Where the owner is unknown, or the purpose for which they were intended has ceased, or where the proceeds from their sale are derived, or where their revenues are available, these assets shall be added to works of piety and beneficence, as the needs of each diocese may require, after consultation with the competent ecclesiastical authority.

[*Latin ed. p. 12*]

Article 29. The Holy See, desiring to promote public tranquility in turn, declares that those who, during the aforementioned circumstances, have acquired ecclesiastical property publicly, or have redeemed taxes in the public treasury, according to the civil laws in force at that time, shall never, at any time or in any way, be subject to any disturbance from ecclesiastical authority. Furthermore, this remission of penalties includes not only the executors of such acts, but also all those who have participated in the exercise of any function related to them; so that purchasers, whether themselves, or their legitimate successors, or those deriving a cause from them, may safely and peacefully possess their property and its fruits. However, it must always remain fixed and firm that such abusive alienations shall never be renewed in the future.

Article 30. With regard to cemeteries, the Government, in conjunction with the respective local Ordinaries, will take steps to ensure that the precautions, which a good and public safety legitimately require, are com-

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bined with due respect for sacred places and the laws of the Church. In the event that opinions do not agree, the Government of the Republic will communicate with the Holy See as the circumstances require.

Article 31. The agreements and conventions entered into between the Holy See and the Government of Colombia regarding subsidies and assistance so that Catholic missions among the barbarian tribes residing within the territory of the Republic may experience greater growth, shall not be subject to the approval of the public assemblies of the Republic.

Article 32. By the present Convention, all laws, ordinances, decrees, and any other provisions whatsoever, previously issued, to the extent that they are contrary to this Convention, are hereby entirely abrogated; and this Convention shall be considered as a law of the land, valid for all time to come.

Article 33. The ratifications of this Convention shall be exchanged mutually within a period of six months from the date of signature, or sooner if possible. In witness whereof, the aforementioned plenipotentiaries have signed this Convention and affixed thereto their respective seals. Done at Rome, on the 31st day of December, 1887. M. Card. RAMPOLLA. IOAQUIN F. VELEZ.

[*Latin ed. p. 13*]

13 FROM THE SACRED CONGREGATION OF THE COUNCIL OF GALLIPOLI, CONCERNED WITH THE CARE OF SOULS. February 18, 1888. Session 24, Chapter 11, Concerning Reforms. SUMMARY OF THE MATTER. In September of the year 1885, the Bishop of Gallipoli reported to the Sacred Congregation that in the city of Orali, the care of souls habitually resided with the Chapter; and that the Bishop himself was the sole and only parish priest of said city, who chose three priests as substitute parish priests, to whom the spiritual and actual care of souls was entrusted. These substitute parish priests, being mostly chosen from among the clergy of the Cathedral or chaplains, and therefore bound by the burden of choral service, do not possess the proper or fitting assistance that should be attached to their office; indeed, for some years, they have not even received the subsidy of 30 ducats, which the Municipality used to pay them for the assistance they provided to those who were about to die. With regard to certain matters, except those that can arise from records and from matrimonial testaments, they do not enjoy anything except the right to wear the black cassock, since almost all funerals are celebrated by the respective rectors in the churches of the confraternities existing in the city. Furthermore, with regard to the burden of choral service, it has not always been the same rule applied to them; sometimes they were treated as if present in the choir, and sometimes as if absent, and therefore were subject to penalties whenever they had to be absent from the choir due to the exercise of their parochial duties. But in recent times, for ten years and

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more, the aforementioned substitute parish priests have been subject to penalties.

[*Latin ed. p. 14*]

GALLIPOLI. The matter of exemptions is being raised anew, not only to the detriment of peace and harmony, but also to the detriment of the divine worship. For, given the great scarcity of priests, it is exceedingly difficult to find a priest who would willingly undertake such a weighty duty without some temporal compensation. In this situation, the Bishop, in order to prevent new disputes from arising between the Chapter and the substitute parish priests, referred the entire matter to the Sacred Congregation for the Clergy. Upon receiving these matters, a decree was issued on October 2, 1885: "By virtue of the faculty granted to me by the Most Holy Father for the granting of exemptions from the choir, in favor of three priests, about whom prayers are offered, during the days and hours in which they are actually impeded from the care of souls, the customary distributions among the present members shall be discontinued." This decree was scarcely known to the Chapter when they immediately began to complain repeatedly to the Bishop, alleging that in a certain document he had affirmed that the habitual care of souls belonged to the Chapter, and they began to protest that, under the pretext of this, burdens were being added to them; finally, the Chapter presented a petition to the Sacred Congregation, requesting that it be declared that the habitual care of souls belonged to the Bishop, and that the grace granted to the substitute parish priests was not only devoid of any merit, but also violated justice and was contrary to the teachings of the Fathers and the Council of Trent.

A Synopsis of the Dispute. THE RIGHTS OF THE CHAPTER. The Chapter maintains that its patron has endeavored to demonstrate that the care of souls pertains to it, both habitually and actually, to the Bishop, and that this can be gathered primarily from the acts of the Visitation, carried out at a time when there was no suspicion, namely, in the year 1839, by Bishop Giove. Indeed, the Bishop states in his report concerning this matter: "The habitual and actual care resides with me; therefore, three substitute parish priests have been appointed in the cathedral church for the administration of the sacraments. In the diocese, there are only two rural parishes, one located in..."

[*Latin ed. p. 15*]

GALLIPOLI. i 5. In the village of Picciotti, there is the church of Saint Mary of Lycia, and another in the village of Saint Nicholas, in which the first has three parish priests appointed by me, and the second has two. And a little later, he continues: "The preaching of the Word of God is held in the Cathedral Church by me every Sunday, and during the solemnities of the Masses, always concerning the homily of the current Gospel." Finally,

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at the end of the same report, the Bishop requested "the appointment of one of the canons from the chapter to the care of souls in this Cathedral Church, and the establishment of two other parish priests in the village of Saint Mary of Lycia and Saint Nicholas." It is not necessary to mention that the Bishop obtained the consent of the chapter regarding this matter; for he himself testified that he did so, not because anything pertaining to the care of souls belonged to him, but because, according to the disposition of the Council of Trent, the canons are advisors to the Bishop and constitute his senate. Furthermore, it is not to be said that the chapter has habitual care, while the Bishop has actual care, for from this would follow the absurdity that the Bishop would be called a vicar and servant of the chapter, as stated by Cardinal De Luca in *De parochis disceptationes*, 17, n. 4, where he says: "A vicar is not called a rector and spouse of the Church, holding it in title by his own right, but rather he is called a servant or minister deputed to exercise the office by the rector, as is the one who has habitual care." This is also evident from the fact that the Bishop himself, and not the chapter, received the tithes and other parochial revenues, which, as De Luca observes in the aforementioned passage, is a certain sign of jurisdiction; and also from the fact that the Bishop independently of the chapter appoints substitute parish priests. Indeed, if the chapter had habitual care, it would be the vicar, and not the Bishop, to whom the nomination of the substitute parish priests would belong, as is clear from the Constitution of Saint Pius V concerning the appointment of vicars, and from De Luca, *De parochis disceptationes*, 18, n. 4. Furthermore, it is necessary to examine the entire Diocese.

[*Latin ed. p. 16*]

16. The GALLIPOLITANA parish was originally established, and it was only in the year 1840 that Bishop Giove took steps to establish two new parishes in the suburbs, by dividing the original parish. This provides another argument that habitual care resides with the Bishop. This is evidenced by a discussion concerning parishes from Lucca, number 4, where it is stated: "That where parishes are not distinct, the entire care of souls is said to belong to the Bishop, who is called the universal parochus, and not to the chapter." Furthermore, this is no less clearly evident from the fact that, in recent times, when the government, under a pseudo-law of the year 1865, attempted to seize the assets of the Episcopal see, the Bishop brought forward the title of parochus, proclaimed that the care of souls belonged to him, and thus preserved the assets of his see. Nor is it otherwise with the present Bishop, as demonstrated in the documents of the Sacred Congregation of the Council, presented in September 1883. To obtain that rescript, from which the present dispute arose, he affirmed: "That the Bishop is the only and unique parochus of the city of GALLIPOLITANA." Indeed, the advocate adds, if the Bishop

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is the only and unique parochus, then habitual care cannot belong to the chapter; otherwise, there would not be one parochus, but two, namely, one habitual and the other actual. Moreover, it is observed that the true and proper parochus should be called he who has habitual care, and not he who actually exercises it. For habitual care is the cause, and he who has it is superior; while actual care is rather an effect, and he who exercises it is inferior. From this, it follows that it would be absurd if the Bishop were to be considered inferior to the chapter, if the Bishop had only actual care, while the chapter had habitual care. Finally, it is noted that the canons of the cathedral cannot exercise even the slightest care for souls, unless they have previously obtained permission from the Ordinary. This, it is said, is impossible if habitual care belongs to the chapter, from which actual care derives, and not the other way around.

[*Latin ed. p. 17*]

GALLIPOLI, August 17. Regarding another question, it is reported that seven secular canons were admitted to the service of the choir and to participation in the common Mass, so that the divine worship might be increased, and the sacred functions might be celebrated with greater solemnity. From this, it is inferred that they cannot, during the time of their choral service, attend to any other duty, and that they are admitted, through the imposition of a penance, to participate in the common Mass, because the primary purpose for which they were admitted to the choral service would cease. And since they receive a remuneration for the service of the care of souls, this should not be given by the chapter, which has no obligation for the care of souls, but by the Bishop, to whom all such care belongs. Indeed, it is argued that canons subject to a penance cannot be exempted, even though the habitual care rests with the chapter; because the obligation of providing for suitable substitutes for the parish priests belongs to him who receives the emoluments and enjoys the right of tithes; not to him who has the habitual care. *De Luca, loc. cit.* Furthermore, it is stated that the chapter has never been found to have received tithes or other parochial emoluments. This obligation was clearly known to Bishop Giove, who, in the year 1840, wishing to establish two suburban parishes in accordance with the Council of Trent, took care to remind the chapter, whose consent he had sought, of four properties which he had purchased at his own expense; two of which were to be used for the support of suitable curates for the new archpriest, Mary of Lizza, and the other two were to be sold to provide for suitable curates for the parish of St. Nicholas. From this, it is concluded that the support of suitable substitutes for the parish priests must be provided by the Bishop himself, as was done by his predecessor, Giove, and never by seeking an exemption for those subject to a penance, to the detriment of the chapter.

RIGHTS OF THE BISHOP. On the other hand, after certain observations

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of facts, by which the Bishop demonstrates that the habitual care of souls rests with the chapter, it has been considered, by the very nature of the office, that the substitutes for the parish priests were not only taken from the ordinary ranks of the chapter, but almost gratuitously. *Acta, Tom. XX, fasc. CC, XLII.*

[*Latin ed. p. 18*]

GALLIPOLI. That it has exercised its office; not only has it been exempt from tithes for several years, while engaged in the ministry of souls; but also the canons have fulfilled more acts pertaining to the parochial jurisdiction, such as the presentation of the stole, the association of the dead, and the collection of certain revenues. And all these things are indications that the chapter participates in the care [of the parish], which, therefore, ought to be found in the chapter, and which, therefore, cannot be anything other than habitual, although it may perhaps be simultaneous and shared with the Bishop. If the case were otherwise, it could not be explained how all these things could have happened. And this must be especially admitted in the judgment of the chapter and its patrons today. Indeed, they hold and maintain that the exemption from tithes is intimately connected with the question of habitual care; so that the exemption should be granted to substituted pastors, if it is established that habitual care exists in the chapter, but it should be entirely denied, if the chapter is not a habitual pastor. Furthermore, arguing from the judgment of the chapter and its patrons, and retaining what the Bishop asserts, namely that substituted pastors have been exempt from tithes for several years, it follows that, at one time and for several years, the chapter retained habitual care pertaining to itself. Likewise, the presentation of the stole is a proper sign of jurisdiction, as the Glossary in *In I. unica verb.* states. *Fibulis cod.* No one is permitted; and the text in Cap. 6 concerning authority and the use of the pallium agrees; *Monacelli, tom. 11, tit. 13, formul. 1, n. 77*. And it teaches that it is a univocal, or determinate, sign of jurisdiction, if someone wearing it performs particular sacred functions, such as in parental or funeral rites, as the Rota states in *Savonen. Aggregationis, 15 Iunii 1699, §*. Not, however, contrary to *Pio*; and in *Bisianen. Praeeminentiarum, 27 Ianuarii 1726, § final, cor. Calcagnino*. Therefore, when a canon weekly in the Gallipoli chapter wears the stole in performing funeral rites, it is clear that the chapter possesses some jurisdiction, which, in most cases...

[*Latin ed. p. 19*]

GALLIPOLI, which is a sign of habitual care: without this, no reason could be assigned for this practice. Indeed, it cannot be explained by a privilege pertaining to the chapter; because privileges, besides requiring the strictest interpretation and absolute proof, once granted to someone, should not redound to the detriment of a third party (lib. 29, tit. I, c. 14 ff.,

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in princ.). But in this case, it would harm the parish and its vicars, since the chapter not only appropriates to itself, exclusively, the parishes of Segni, but also receives a double portion of revenues, causing a grave loss to the parishes, who, on the other hand, have no means of honest living. Moreover, it would seem to conflict with the Bishop's jurisdiction, if the chapter, which claims to have no parochial title, were to replace one of its members, who wears the stole at funerals, in place of the parish priest delegated by the Bishop, under whose purview the entire parochial administration exists. Indeed, if this would be serious in the case of a simple parish priest, it is most serious when it concerns the person of the Bishop. Since the chapter cannot invoke any dignity before the Bishop, so that these rights, as if from a privilege, would be prescribed against him. Conversely, there is nothing inconvenient or absurd in the fact that habitual care belongs to the chapter, while actual care belongs to the Bishop. For it often happens that he who exercises actual jurisdiction, even though the chapter is habitually a parish, is not inferior to the chapter, but superior, as happens in most cathedrals and collegiate churches, in which the highest dignity and the head of the chapter is the parish priest. In this matter, nothing should be imputed to the Bishop because the actual parish priest is: for this right, as if from the highest dignity and the head of the chapter, would obtain, while the habitual one would share with the chapter members. Let it be so. Bishop Giove and the chapter of his time decreed that actual and habitual care belonged to the Bishop. First, the "books of visitations," although they prove as far as the visitation of persons and sacraments;

[*Latin ed. p. 20*]

20. The acts from GALLIPOLITANA, however, are not sufficient to prove the right of patronage and the right of institution, since they are performed without full knowledge of the cause." See Pisag., *Praec. Episc.*, part 2, chap. 5, no. 7. Furthermore, although it was stated that the Bishop was burdened with actual care, the exclusivity of this burden was not asserted, nor was the participation of the chapter in the care excluded. Indeed, the actions of the Bishop themselves suggest the contrary. For what reason would the Bishop have sought the consent, counsel, and approval of the chapter regarding such a weighty matter, concerning the constitution and provision of a stable pastor in two suburban parishes, if he himself were the sole and absolute parson of the city and diocese? If he were able to carry out such a provision, why would he need the consent and approval of the chapter according to the common law? As is evident from the Council of Trent, session 24, chap. 13, concerning reforms. Therefore, if the Bishop was so concerned about obtaining this consent and approval, it must be said that he did so not so much in obedience to the rule of title III of the Decretals, concerning those things which are done by prelates, etc., which rule does not apply here; rather, it was to avoid any difficulties, because

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the chapter was present and had some particular interest and competence regarding the care of souls in its diocese. Furthermore, it does not impede that the chapter does not appoint vicars. For, in the case we are discussing, since the actual care is not entrusted to a vicar of the chapter, but to the Bishop himself, it does not prevent the Bishop from appointing substitute pastors, and certainly not the chapter. But even if the substitute pastors were vicars of the chapter, rather than of a single Bishop, still the cause could be explained without this difficulty. For the appointment of vicars, although it is the primary and most important sign of habitual care in the chapter, is not the only and absolute one, without which it cannot exist. Indeed, in Lauden., concerning parochial rights and emoluments, of August 21, 1886, habitual care was not denied to the chapter, although it was certain that the chapter did not usually present the Archpriest, to whom the actual care of souls was entrusted.

[*Latin ed. p. 21*]

GALLIPOLI, 21. It has been asserted, on the contrary, that one who lacks any foundation [for his office] cannot truly be considered a parish priest, namely, that a parish priest with only habitual jurisdiction is not a true parish priest. Indeed, he who has habitual jurisdiction "does not, in fact, exercise the care [of souls], nor is he able to exercise it; but he provides, as far as he is able and ought to, that it be exercised by someone under the title of a vicar." *Bovàx de par.*, p. 1, section 3, chapter 1. Therefore, "a parish priest with only habitual jurisdiction is by no means a true parish priest, but such a title is valid only to present certain rights to him... [He] not only does not minister by virtue of his office, but he does not even have the right to minister." *Ibid.* And such a benefice is considered to be equivalent to a simple benefice. *Barbosa de par.*, p. 1, chapter 2, number 51; therefore, it is conferred without concurrence. *Reclusius*, p. 1412, number 57, and it does not require mention of habitual jurisdiction for the validity of the apostolic grace. *Rota cor. Malines*, dec. 492, number 6. Furthermore, when mention is made simply of care or of a parish priest, it is understood, by its very meaning, to refer to actual care. *Barbosa*, *loc. cit.*, and others. Regarding the question of jurisdiction, the Council of Trent, session 22, chapter 3, concerning reforms, states: "But if to anyone among the aforementioned dignities in cathedral and collegiate churches, by law or custom, jurisdiction, administration, or office does not pertain, but outside the city, within the diocese, a care of souls is present to which he who holds the dignity wishes to be assigned, then for the time that he resides and administers in the cared-for church, he is considered to be present and to participate in the divine services in the cathedral and collegiate churches." And the Sacred Congregation, citing Pope Benedict XIV, *Inst. eccles.*, 107, in Milan, on February 3, 1609, decided: "that a cleric who has attached to him the burden of care of souls, if, at the time

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that divine services are celebrated, he hears confessions or performs other duties pertaining to that care, should receive the daily distributions, even if he does not participate in the divine services." The same applies if, while habitual care exists in a parish, the actual care is administered by a canon or a beneficiary.

[*Latin ed. p. 22*]

22. The Sacred Congregation of Rites (S. C. O.) definitively established in Pisa, within the jurisdiction and rights of [the diocese], on July 27, 1839, at VII. Furthermore, it is permissible for this rector to be transferred at the will of [the bishop], as the same S. C. decreed in Aosta on December 14, 1844. This should also be the case when a canon or beneficiary is engaged in parochial ministry, taking into account the habitual care of the chapter, or the assignment of a cure to be provided, provided that the parish is established within the cathedral or collegiate church, as stated by Ferraris in *Vocabulum*, article 1, number 71, which cites the authority of Pope Benedict XIV; and also by d'Annibale in *Liber 3, Summa Theologica*, § 492, where he states: "Indeed, a canon or anyone else from the chapter, to whom the care of souls is entrusted, while performing the duties of a parish priest, is considered present in the choir, so that he may enjoy the fruits, even though he retains his canonry by apostolic dispensation; he also receives daily distributions, but as if absent due to the cause of his church; and therefore, if a parish is established within the very cathedral or collegiate church." Of course, an exception must be made in cases where substitute pastors receive a suitable compensation for their work, as decreed by the Sacred Congregation of Rites in Melevitana (Valencia) on September 13, 1862; but in the case under consideration, it has happened, due to circumstances, that even that small support, which otherwise existed, has been withdrawn; it therefore seems just, indeed necessary, that substitute pastors be excused from the [obligatory] attendance. Do not say that the bishop should compensate the substitute pastors: indeed, it is not clear whether the bishop, especially in these times, is able to do so. Conversely, a simpler and more expedient way, which does not appear to greatly harm the chapter, is to exempt the substitute pastors from the [obligatory] attendance. And this was the reason for which the disputed decree was given. To this concession, not only does the aforementioned reason of justice and equity contribute; but also the assertion, which is not without its probability, that the chapter shares the habitual care with the bishop. Indeed, such a decree does not apply to every circumstance...

[*Latin ed. p. 23*]

GALLIPOLI, 23 [of the month], concerning the habitual care, it is evident that it depends on the chapter, since it has been granted by the authority of the apostolic power, or by grace. Conversely, if habitual care

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were deemed to belong to a certain chapter, the exemption would not have been granted by grace, nor by apostolic indult, but by the authority of law. Having stated these and other things, the following questions are to be considered:

1. Whether, in any case, habitual care of souls belongs to the chapter, and to what extent, negatively.

2. Whether the question can be raised regarding the rescript of October 2, 1885, in this case, negatively.

RESOLUTION:

The Sacred Congregation, after deliberation, decided on March 24, 1888, to respond as follows:

1. Negatively.

2. Negatively.

FROM WHICH THE FOLLOWING ARE DEDUCED:

1. The vicar is not to be called the rector and pastor of the Church, possessing that title by his own right, but rather a servant or minister appointed by the rector, who is the one to whom habitual care belongs.

2. The receipt of tithes and other parochial revenues is to be considered, in law, as a certain sign of jurisdiction.

3. From the Constitution of St. Pius V, in order to maintain the vicar's title, the vicar's care must be preserved if he has habitual care.

4. Where parishes are not distinct, the care of all souls belongs to the Bishop, who is called the parish priest.

5. A private confession holds great weight in judgments, especially if it was not given at a time of suspicion, nor for one's own advantage.

6. In the present case, the Sacred Congregation responded negatively, because both from the acts of the Visitation and from its own examination...

[*Latin ed. p. 24*]

24. Concerning the Bishop's confession and other aids, the habitual care remains with the Bishop, and not with the Chapter.

VII. He who holds a dignity in cathedral and collegiate churches, to whom the care of souls is assigned outside the city within the diocese, is to be considered present in the cathedral and collegiate churches for the time that he resides in and administers the assigned church.

VIII. Therefore, if, at the time when divine services are celebrated, he hears confessions or performs other duties pertaining to the care of souls, and distributes alms, he is to be considered present, even if he is not present at the divine services.

IX. A canon or beneficiary of a cathedral or collegiate church, to whom

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habitual care is assigned, is to be considered present for the time that he fulfills the burden of the care of souls. This is to be understood in such a way that, even if the one appointed to the care of souls can be removed at the will of another, the aforementioned canon or beneficiary is to be considered present.

X. Indeed, the aforementioned canon, or any other member of the Chapter, while performing the duties of a parish priest, is to be considered present in the choir, so that he may receive the fruits and distributions of the parish, even if the habitual care does not reside with the Chapter; provided, however, that the parish is established in the cathedral or collegiate church.

XI. However, the following case is to be excepted: when the care resides with the Chapter, and the Chapter entrusts the administration to one of its canons for a fixed salary.

REGIONAL JURISDICTION AND PENSIONS.

February 18, 1888. Session 14, Chapter 9, Concerning Reforms.

COMPENDIUM OF FACTS.

At the end of the 15th century, three brothers, Leonellus, Iacobus, and Christophorus Zobuli, reserved the right of patronage for themselves, their heirs, and successors, in the collegiate church and prebendaryship, which was founded by Nicolai.

[*Latin ed. p. 25*]

REGIENSI, 25 [date]. Furthermore, now they are seeking to vindicate the right of patronage for the Diocese, the Bishop, Count Charles Cassoli Lorenzotti, Countess Victoria Cassoli Pancaldi, Countess Aloysia Cassoli Catini, together with their family, and the family of Monein; truly, besides these, others are mentioned who, although today they do not claim this right for themselves, nevertheless have at one time enjoyed it: such as certain Zoboli, Father Aloysius De Medici, or his father, and the brothers Anthony and Aemilius Cagliari, or their heirs.

(1) A SYNOPTIC SUMMARY OF WHAT FAVORS THE BISHOP. It has been noted that the Bishop, not without reason, claims the patronage based on three sources: first, that which comes from Leonello; for it is known that Leonello, along with his son John, donated the right of patronage to the Episcopal See of Regiae, as evidenced by the register of the notary Arlotti, where this donation is recorded from the year 1493 to 1505, having been requested by the same notary; second, from the bull of Pope Pius IV, in which such a cession is mentioned and ratified; third, from the celebrated Rotali judgment before Priolo Cafarello and Pompeio Aldovrando at

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the beginning of the 18th century, which is frequently referred to in these pages; where mention is also made of another judgment that had previously been held before De Rubeis Oradino and Robusterio. Indeed, in the final judgment of the Rotali, held before Priolo on Monday, June 28, 1706, these words are read concerning the matter: "Regarding the first donation of Leonello in favor of the Episcopate, beyond the aforementioned public instrument, it is proven by the Rotali judgment of our tribunal before De Rubeis Oradino and Robusterio." Finally, fourthly, it is known from the continuous exercise of the patronage, as related, and from other trustworthy documents, that the Bishops of Regiae have, from the beginning and throughout the 16th and 17th centuries, customarily enjoyed this right.

(1) For more information regarding this matter, which has been discussed on several occasions, see Vol. XVII, 526, and Vol. XX, 443.

[*Latin ed. p. 26*]

26. REGIAE. The form and duration of the investiture, as well as the right pertaining to it, were granted to the donors themselves, that is, to one or the other of the Zobulus family. The last such investiture occurred in the year 1702, through the favor of the Marquis John Zobulus, who was a priest and held the position of [patron] of St. Nicholas, and who was a party in the aforementioned cause, which was brought before the Sacred Rota at the beginning of the 18th century. However, after his death, the Bishops ceased the practice of investiture, and exercised the right of presentation themselves, although at times they would consult with other patrons regarding the possibility of alternating presentations; which, however, as is evident, does not detract in any way from the rights of the Bishops, being an agreement made in the interest of peace. Nor did the exercise of the right of patronage cease in the last instance, which occurred around the year 1840, and which, like the present vacancy, gave rise to a long-standing and acute question, which was brought before the Sacred Congregation of the Council; in which case, however, the Bishop, for his part and in connection with his title, effectively made an appointment, as will be further discussed later. Therefore, it is clear that the people of Regiae can present and demonstrate the truth and justice of the donation made by Leonellus, which is confirmed by an authentic document, by apostolic bulls, by judicial decisions of the Rota, and finally, by the constant exercise of this right; but also the fact of possession and prescription: which in matters of patronage has full and undeniable value. Therefore, to say that the donation of Leonellus was not valid, or, at the very least, that it did not affect his successors; and to support this by invoking the principle that the right of patronage, along with the jurisdiction of the patrons or their successors, cannot be donated to outsiders by the founder, is a significant error. Indeed, there are two species of patronage to be distinguished: one in which the founder establishes a

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single and unique right,

[*Latin ed. p. 27*]

In one case, a single line, family, or succession is designated for the exercise of the right; and in the other, the founder calls upon multiple lines or successions to exercise the patronage right from the beginning. In the former case, if, over time, several individuals succeed to the founder's right, the right of accretion takes place, because it is a single right, and the heirs, although multiple, represent one solid patron. Conversely, this is contrary to what happens in the latter case, when the patronage right was reserved from the beginning to multiple distinct lines. Then, there are as many patrons as there are lines, and the voice of one does not pass to the other, as Pitonius, *De controversiis*, part. 2, title 13, numbers 7 and following, states; but each line is considered to have acquired its own right, as stated in title 76, numbers 8-18, and Ferraris, *De Iure Patronato*, article 2, number 7. Therefore, if one line decides to transfer or donate its right to someone outside the family, the other patrons cannot object, because each one is free to dispose of their own right. However, in the case under consideration, we find that the patronage was left to multiple distinct lines. The founders, who were three, reserved their right for themselves, their heirs, and their successors. Therefore, Leonellus could freely, without harming his brothers, donate what was his, to whomever he wished. It cannot be assumed that a patronage left to heirs and successors cannot be donated to outsiders. Indeed, we have the following arguments: the case in which the founder himself, who was depriving himself of the patronage right, donated it to the episcopal see; the case in which this donation was confirmed by apostolic authority, and by constant practice from the earliest times to the present day; and finally, the case in which the same right was recognized in its entirety by two Royal Courts. Furthermore, it is established by the testimony of Reiffenstuel, in *De iure patronato*, § 2, and Ferraris, *De iure patronato*, § 2, that the patron can freely cede and donate his right to outsiders in the case of a common right. Given these circumstances, it is difficult to argue that the common phrase, "the patronage is reserved for its heirs and successors," prohibits donations and cessions to outsiders.

[*Latin ed. p. 28*]

28. REGISTRUM. Extranei. Sicut docet Fargna, pars. 2, cap. 5, num. 4, patronus, certe, non potest patrocinium gentilis litigantium "valide in extraneum transferre, existentibus eis de familia a fundatore contemplatis in horum praeiudicium"; sed hoc potest "si isti de communi consensu approbent hanc translationem et donationem." Atqui in hoc casu, non unus Leonellus, sed Leonellus eiusque filius simul fecerunt cessionem. Denique Leonelli filius, descendentes et necessitates caruisse videtur: quapropter magis magis liber ipse ac eius pater in donatione evadebant. Ex quibus

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omnibus, difficultas satis superque diluitur, simulque ius in vadum tutissimum ponitur.

IURA ALIORUM PRAETENDENTIUM. Sequitur comes Carolus Cassoli Lorenzotti cum aliis de familia. Porro, procurator, quem ille sibi constituit, in primis legitima documenta produxit, quibus probaret clientem suum cognatione coniungi cum comitissa Cornelia De Zobulis, et per eam cum Iacobo De Zobulis, ex fundatoribus altero. Genealogia autem Cassoliorum sic procederet: ex Iacobo per Timotheum et successive per Alphonsum, Nicolaum, Alphonsum iuniorem, et Ernestum nata est unica filia Cornelia, quae nupsit Carolo Cesi; et sic sua iura in hanc familiam transfundid. Ex Carolo Cesi per Ferdinandum et Annibalem nata est Eleonora, quae quoque unica proles asseritur, et ideo iura sibi quaesita transtulit in virum suum Paulum Cassoli-Lorenzotti, sive eius filios qui tres fuerunt, Georgius, Aloysius et Victoria. Porro, Victoria nupsisse cuidam Nicolao Pancaldi et adhuc vivere una simul cum viro suo videtur, ac certe ad patronatus sibi vindicandum dimicat. Aloysius vero duas habuit uxores: ex prima nati sunt Carolus et Ferdinandus; ex altera vero Adelaides: Ferdinandus paucos ante annos vita functus est: Carolus autem et Adelaides vivunt et actores sunt in causa. Georgius tandem, juxta fidem Mutinensis syndici, tres habuit masculos filios, hac serie genitos: Petrum, An;

[*Latin ed. p. 29*]

REGIEN. On the 29th of November, Alphonsus: but, if Victoria and Nicholas Pancaldi are to be believed, two daughters, Anne and Aloysia, should also be added, both of whom are married, this one to a certain Pudullo, and the former to Jerome Oattania. But of these five sons of George, one is Hannibal, or, since Hannibal is deceased, three of his children, Anne, Aloysia, and Peter, claim to be admitted to the patronage, while all the others remain silent, for some unknown reason. Furthermore, although the Cassoli family is connected to James through Timothy, it cannot be demonstrated in any way that James has any legal claim. For James, the founder, had two sons, Timothy and Sigismund; and by the father's will, Sigismund, excluding Timothy, succeeded to the father's rights; and subsequently, one of Sigismund's descendants, excluding the line of Timothy, always maintained this same right, as will be explained below. Therefore, although the Cassoli family is derived from James, James does not seem to succeed to the rights. However, Christopher does succeed to the rights. For in the year 1492, Christopher, perhaps because he had no offspring, granted his voice and his rights to Timothy, his nephew, who was the son of James. From Timothy, this right and voice passed through legitimate successions and generations to the Countess Cornelia Zobuli, who lived at the beginning of the 18th century, and who was the last in the line of descent from Timothy. That this Cornelia was the universal heir of Christopher is established by a judgment rendered in Rotali before

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Priolo, Caffarello, and Aldovrando, which occurred at the beginning of the same 18th century, and which will be discussed below. Cornelia Zobuli married Charles Cesi, and from them, through Ferdinand and Hannibal, was born Eleonora. That Eleonora succeeded to the rights of Cornelia is established by the disputed legal proceedings concerning the patronage, which were presented to the Sacred Congregation four times, namely on September 18, 1841, June 4, 1842, August 24, 1844, and June 4, 1845. At that time, no one doubted that Eleonora Cesi was the legitimate heir and lady of Christopher; indeed, she was entirely in peaceful possession of it.

[*Latin ed. p. 30*]

30. REGISTRATION. The right of patronage was admitted by all, as will appear in its place; for this reason, the hearing was postponed slightly. Eleonora Cesi was married to Cornito Cassoli L'orenzotti, and three children were born from this marriage: George, Aloysius, and Victoria. As I have already said, these three were considered as a group contending for the patronage. And first among them is Victoria, the wife of Nicholas Pancaldi, who presented a brief claim, which it is necessary to summarize here. There, having conceded the three livres of the episcopal table of Leonelli, and having retained the three livres from the donation of Christopher, which had been transferred to Eleonora Cesi through legitimate generations, the woman further argued that the voice of James had been divided equally between two of her sons, Timothy and Sigismund; and therefore, Eleonora Cesi, besides the three livres of Christopher, had also inherited half of the voice of James. The truth upon which this assertion rests will be judged by the E.P., after they have considered the arguments that will be presented regarding the voice of James. In the meantime, Victoria, continuing her plea, states that Eleonora Cesi had three children, George, Aloysius, and herself; but that the two brothers, because of the simony they committed in selling their right of patronage, about which more will be said later, had been deprived of all right; and therefore, the entire patronage, as a single entity, had been completely transferred to herself. She writes: "The right of patronage is, by its very nature, an indivisible thing, and, with regard to ownership, pertains in its entirety to each of the patrons, according to Fargnap. 2, cap. 1, ease 1, n. 1. It is certain that in other cases, a portion of the patronage is consolidated for those who are absent. This happens in cases in which unsuitable, or unworthy, or nonexistent persons are present; Farina, part 3, cap. 1, ease 6, n. 5. Therefore, since the two elder sons of Eleonora have been deprived of the right to present themselves for this reason, she concludes that, as the third of her children, she should be found to possess the full right. However, the petitioner desires the patronage of

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Christopher.

[*Latin ed. p. 31*]

In Quarten, concerning which it is permissible to speak only to a limited extent, he ought to demonstrate that he possesses the two necessary qualifications: 1° that he, as he asserts, is truly the son of Eleonora and Paul Cassoli; 2° that he has inherited, either by testament or at least by intestacy, the rights of Eleonora as a family member. However, although he has promised to present the documents necessary to prove his genealogy and other requirements as soon as possible, he has not yet done so. Therefore, nothing certain can be concluded from his allegation. Furthermore, it is easily demonstrated that the quality of being a legitimate heir is absolutely necessary for succeeding to the patronage in this village. For, the founders reserved the patronage for themselves and for their heirs and successors; therefore, unless someone possesses these qualities, he cannot be admitted to the patronage according to the explicit will of the founders. This is also confirmed by the prescriptions of law. Indeed, it is established in Ferraris, Common Law, § 1, no. 9, with numerous authorities cited in support, that a patronage, which is neither purely hereditary nor purely based on lineage, but mixed and lineal, as is the case in this village, can only be transferred to those who possess both qualities, namely, that of an heir and of a kinsman. The words are: "The patronage is mixed, and it is clear that it is reserved for successors and heirs; Rota, Part 11, Decision 254, no. 9." Moreover, "To the effect of succeeding to a mixed patronage, both qualities are required, namely, hereditary and agnatic, or that of an heir and a kinsman; Rota, Part 6, Decision 267, Part 9, Volume 1, Decision 185, no. 7, Part 11, Decision 254, no. 16, Part 19, Volume 1, Decision 223, no. 16." Therefore, although it is true that in the same passage, Ferraris also teaches that when the patronage is transferred by hereditary succession, it is transferred "to any heirs, both male and female, both legitimate and illegitimate, whether by intestacy or by testament; hence, if a daughter is an heir with a brother, she succeeds to the hereditary patronage equally with him, and all succeed with equal rights, although unequal portions may be instituted."

[*Latin ed. p. 32*]

32. REGENCY. The heirs: "and they succeed in the headship, all being of equal rank; they succeed in the lineages, if they are of different degrees, according to the established rules of succession; but this availed little to the lady Victoria. Although it may be permissible for her to be an heir by maternal right; nevertheless, it is doubtful whether she truly was, 1° because, especially in former times, women's possessions obtained through dowry were often separated from their agnatic lineage, and they were no longer participants in the family's rights; 2° because in the aforementioned sale of the patronage, we find that she had no share, and that two of her brothers,

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nor did her sister, either claim or consent, who, being absolute masters of the business, entered into a scandalous agreement; which, although reprehensible, is not necessarily invalid in the eyes of the law. After Victoria, Eleanor, the daughter, Pancaldi's wife, who claims the right of patronage from the Cassoli estate, are Charles and Adelaide, Aloysius's children, Eleanor's nephews, who, in fact, have promoted this cause as plaintiffs. Furthermore, Charles, through his procurator, proves, through legitimate documents, his descent from Eleanor, and not only claims the full voice of Christopher, but also that of Leonella and James. However, as it appears, unjustly. For Leonella's voice, which legitimately passed into the episcopal chapter, has been demonstrated above; and James's right will soon be shown to have passed into another lineage, and to other heirs altogether. It will also become apparent how falsely and with what lack of equity the procurator of Count Charles has assumed and defended the contrary. For, in order to ascribe the entire patronage to his client, he quoted certain words from the Rotali sentence before Priolo Caffarello and Aldovrando, taking them out of all context, and from them he argues that the Countess Cornelia Zobuli had been declared the heir to the entire patronage, which, having been transferred to Eleanor Cesi, ultimately became the property of Count Charles. But from the entire context of that Rotali sentence, it will be clearly evident that the matter was quite different; and that Cornelia had renounced the voice of Christopher as its owner; therefore, this is one...

[*Latin ed. p. 33*]

REGIEN. He could have transferred his inheritance to his heirs and to Eleonora Cesi. If the matter required confirmation, the cause was brought before the Sacred Congregation of Councils this century, where it is clearly shown that Eleonora was the mistress and heir of the expressly named Christophorus, and this is abundantly demonstrated. But if anything more needs to be discussed, it does not even appear that the voice of Christophorus pertains in any way to the Count Charles Cassoli Lorenzotti. For there are others who claim a no less valid right, namely those descended from George, who was the firstborn of Eleonora's children. And although of the five born to George, one is Annibal, or, since he is deceased, three of his children have come into their inheritance, whether this happened through the negligence or ignorance of others, or for some other reason, remains unknown; however, this is of little consequence, for there would always be those who would represent George; indeed, since these are the descendants of the firstborn son of Eleonora, they seem, if anything can be surmised, to have a more valid claim than Charles and Adelaide, who are descended from the second son of Eleonora. Among those, however, who lead the group is Aloysia, married to James Cattinin, who presented authentic and legal documentation of her lineage, and subsequently, not only for herself but also in the name of her sister, the Countess Eleonora,

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in Gilocghi, and also for her brother, the Count Peter, all descendants of a certain Count Annibal, humbly requests that their own rights be observed before the Sacred Congregation of Councils. And the Bishop, transmitting these petitions, testified that they are all worthy of consideration on every side. Furthermore, in order to exclude these individuals, Charles Cassoli's advocate for Bare should demonstrate that he has succeeded to the rights of his grandmother Eleonora, and that George was not the heir of his mother's estate, or that he himself did not relinquish his rights to his children; which neither Charles nor his advocate have yet done. Certainly, Charles presents the argument that he is the senior of the Cassoli lineage, and he exhibits a chirograph from the syndics of Mutinensis to that effect.

[*Latin ed. p. 34*]

34. REGIS. The assertion appears false in part: for Victoria is present, who is both his niece and his senior; moreover, women are not excluded from the exercise of legal rights; 2° moreover, it appears to be a futile dispute: for if it had been prescribed that only the eldest of the family should succeed, excluding all others, the honor of age would spontaneously be advantageous. But rather the opposite appears to be the case, namely that heirs should come into the rights of the father and the family. Therefore, age should not be considered. Therefore, retaining what Ferraris teaches in the aforementioned passage, namely that in hereditary succession, the qualities of the heir and of blood, and not others, should be considered; now, since both Aloysius and George have legitimately proven the lineage of their offspring, especially Charles Cassoli, who, from both ecclesiastical and civil records, demonstrated the lineage of Eleonora and Paul Cassoli and sought to have it approved; conversely, in the matter of inheritance, neither Charles and Adelaide, nor Aloysia, Anne, and Peter, born of Gregory, have proven the title of heir: therefore, in this point, the condition of all is equal, and all seem to rest on the same title, and to be afflicted by the same defect. However, it seems probable that both Eleonora's son, and perhaps even her daughter Victoria, have inherited family rights, either by testament or by intestacy, as another positive judgment, besides the presumption of piety, suggests. The aforementioned fact of the sale of legal rights, in whose declaration a slight correction is necessary, is not so much to prove that George and Aloysius proceeded with equal intent and equal right; as to show that the sons born of them, who today claim the patronage, are not guilty of paternal wrongdoing, and do not suffer any harm from it. After the Italian government promulgated a pseudo-law by which patrons were permitted to seize beneficial property, provided they ceded one-third to the treasury, George and Aloysius Cassoli met with the Hebrews De

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Benedetti for the sale of their rights.

[*Latin ed. p. 35*]

REGION. 35. Indeed, George and Aloysius Cassoli, and even Ferdinand, the son of Aloysius, who, having conspired with the Hebrews, were involved in the simoniacal sale of ecclesiastical benefices, not only incurred censures, but were certainly deprived of the right of patronage. And if the patronage had been hereditary, their sons would have suffered a similar prejudice. But since the matter concerns mixed patronage, and therefore involves favorable qualities of secular inheritance, it follows that the sons of George and Aloysius, called by the founder, and not having a father who is the author of the patronage, still inherit the right of patronage. This is taught by Fargnap. 1, canon 4, chapter 13, number 2, where it is stated that in a gentile patronage, if the patron sells his right, "nevertheless, the church does not become free, but while the simoniacal patron lives, if the church were vacant, the Bishop should present someone to it; after the death of the aforementioned patron, the right of patronage should pass to him who is of the called lineage." The reason is because this person does not have the right of patronage from the patron who committed simony, but from the founder who called him to the right of patronage, and therefore the simony of that patron cannot prejudice him.

Therefore, recalling what was said in this second paragraph of the prayer, we have that the patronage of Christopher, through Timothy, the son of the founder James, passed to Countess Cornelia Zobuli, and from her, having married a certain Cesius, it was transferred to Countess Eleonora Cesius. This woman had three children: Victoria, who is said to still be alive; Aloysius, whose two children, Charles and Adelaide, survive; and Gregory, the eldest, whose children are either dead or silent, with only three grandchildren contending for the right of patronage. Furthermore, when it is a question of the right of patronage being left to heirs and successors, in order to claim it, in addition to the quality of blood, it is also necessary to prove the title of inheritance. But Victoria has not asserted this title, nor has she demonstrated her genealogy; Charles and Adelaide, like the grandchildren of George, have certainly proven their lineage; but they have not spoken of inheritance; nevertheless, they may, both by presumption of piety and by the fact of their descent.

[*Latin ed. p. 36*]

36. In the patronage of the Regiae estate, in which both brothers had equal shares, it has emerged, whether through intestacy or testament, that each had become the heir to family rights. It remains to speak of the will of James, which, as mentioned, was presented to Timothy, and which bequeathed a legacy to another of James's sons, named Sigismund, and which passed to a completely different lineage than that of the Cassoli, belonging

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to the family of Cagliari. From the discussions in the case concerning the patronage of Regiae, before Priolo Caffarello and Aldovrando, whose more serious arguments are now alleged, it is clear that James had stipulated in his will that he would be succeeded in his voice and right of presentation by the most ancient and worthy of his sons and descendants, provided that he was a layman born of a legitimate marriage: with these words, as is clearly evident, he intended to determine more precisely regarding his will the power recognized in the foundation's statutes, which was to be transmitted to his heirs and successors. Sigismund was succeeded by John Francis, the younger of Sigismund's sons, who had several sons, of whom three, Anthony, Jerome, and Hippolytus, were still alive at the beginning of the 18th century. Of Anthony's descendants was the marquis and prelate John; of Jerome, Jerome the younger; of Hippolytus, Joseph, Julius Francis, and Hippolytus the younger, whom the people of Parma were accustomed to call "Zobuli," because they lived in Parma. At that time, from the lineage of Timothy, the daughter and heir of Ernest, Cornelia, a young girl, was the last known member of her family. It also happened that the Bishop of Regiae, regarding the right he had obtained from Leonello, made a temporary cession of it under the name of investiture and fief to Marquis John, son of Anthony Zobuli, mentioned above, and to the prelate. Since a certain benefice had become vacant at that time in the collegiate church of St. Nicholas, this question arose among all of them. For Cornelia Zobuli, or, because she was a minor, her mother and guardian, Silvia Cultia, were to present a candidate for the vacant position.

[*Latin ed. p. 37*]

REGIEN had named the priest Rota of Omitissa, who was accompanied by the marshal and the prefect, John. But, conversely, Jerome and others from Parma, the Zobuli, had named Saltinus, and they vehemently opposed the presentation made by Cornelia and the prefect. The matter was brought before the Sacred Rota, so that it might judge the validity of one nomination over the other; a matter, as is evident, which depended on another cardinal's opinion regarding the ownership of the rights. Therefore, on Monday, June 28, 1706, the Sacred Rota, after deliberation, responded to the doubt raised, concerning whether and in whose favor, and for what reason, the right of patronage existed, even to the effect of the adjudication, and it ruled, in favor of the complainants, that is, the Countess Cornelia and the prefect, and in favor of the nomination made by them. The case was again debated before Priolo, and again before Caffarelli, and finally before Pompeio Aldovrando; Jerome and the Zobuli of Parma defending themselves on these occasions, but to no avail, because the Sacred Rota always maintained the same opinion, and finally ordered the execution decree to be issued, which was signed on July 4, 1710, and which we have in its original form in the records, presented by the aforementioned Count

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Charles as curator. But, so that the significance of this Rotal judgment may be understood, and so that all that has been said thus far may remain proven, it is necessary to present the more notable part of that Rotal conclusion before Priolo, which was the first, as well as the execution decree. In the former, the following were considered and maintained: "According to the tree and the documents presented, Christopher, one of the brothers and founders, in the year 1492, donated his third part, or his voice, to Thimotheus, the grandson of James, the brother; a donation which was ratified and confirmed three years later." "In the year 1493, James, the other brother, stipulated that, in his will and right of presentation, the eldest and most worthy of his sons and descendants should succeed, provided that he remained a layman and was born of a legitimate marriage."

[*Latin ed. p. 38*]

38. REGGEN. "And finally, concerning the year 1504, Leonellus, the third brother and founder, granted his voice to Francis Arlotto, the Bishop of Reggen, and to his successors in the episcopate—" "From this series of events, it results that the patronage is to be regulated by particular wills of the founders themselves; therefore, it does not seem that the first voice (of Christopher) can be disputed, which pertains to the Countess Cornelia—" "From a special investiture by the Bishop of Reggen, it is also undeniable that the Marquis John has a right concerning one of the three voices; for, concerning the first donation of Leonellus in favor of the Episcopate, beyond the aforementioned public instrument, it is confirmed by a judgment of our tribunal before De Rubeis Oradino and Robusterio..." "However, it is considered disputable the second voice, which originates from James, whose male line is found to have branched out in several directions, namely, to the aforementioned Marquis John through the marquis Anthony, from Jerome the elder to Jerome the younger, and from Hippolytus to Joseph, Julius, Francis, and Hippolytus the younger, all of whom are Parmesans and adversaries in the cause. The writers for the prelate asserted that this voice also pertained to him; because, proceeding even with the reading of the aforementioned instrument, he was older in age and superior in reason of ecclesiastical dignity. It does not impede that the older one should be a layman, for..." And it is concluded: "Therefore, the pertinency of the aforementioned patronage, according to the distinction of voices mentioned above, the disputed chapel is to be assigned to John Baptist Rota, who was presented by the Countess Cornelia, to whom the prelate, Marquis John, adhered, who are, in their entirety, or at least for two parts, patrons, and the third cause is held by those who were in quasi-possession of presenting, to the exclusion of Saltini's presentation to others of the family, who could have the voice

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derived from James, if the Prelate, as a cleric, remained incapable."

[*Latin ed. p. 39*]

REGIEN. 39 From these things, it is now clear that all that has been asserted up to this point, namely, the donation carried out with the favor of Bishop Leonello, the law of James concerning succession in his own right, and the donation decreed by Christoph for Timothy, are wonderfully confirmed. Furthermore, it is held that the voice of James was recognized by the Zobuli of Parma, concerning Leonello the Bishop and those invested by him, and finally, that the right of Christoph, and this alone, was granted to the Countess Cornelia. However, because the Most Holy Rota did not wish to define the intricate question of the pertinence of James' voice among several of the heirs of Sigismund, it derived this from the fact that, in order to reach a solution to the dispute, it was sufficient to determine to whom the two of the three voices belonged, and to bring them together into one of the presented options. But it is best to place the very execution decree in this case before one's eyes. There, after having presented certain things concerning custom and history, the Most Holy Rota proceeds as follows: "For the first time, a particular doubt was raised by the same Reverend Father Prior, and it was proposed in the full assembly of the Rota on June 28, 1706, and there it was fully and maturely discussed and resolved, that by law, the patronage of the collegiate church of Saint Nicholas belonged to the Countess Cornelia, and also to the Provost John, Marquis of Zobuli, to the effect that one of them should be assigned as a chaplain to John Baptist, presented by the Rota; and in a new proposal held on June 25, 1708, with information received from various parties, it was confirmed, according to the rights and reasons expressed in the decisions mentioned above; finally, the Reverend Father Prior... presented and promulgated the final judgment in the following terms: - The presentation and nomination in favor of and in the person of the aforementioned priest, John Baptist Rota... was and is rightly and lawfully and legitimately made. Item, with the same definitive judgment, and proceeding as in the first instance, we say, pronounce, decree, declare, and definitively judge that the patronage of the aforementioned venerable collegiate church of Saint Nicholas, and the right to nominate and present for the provostship, as well as for all the presbyteral benefices or chaplaincies..."

[*Latin ed. p. 40*]

40. The rights and privileges pertaining to the noble Marchion and the Provost John, and also to the Countess Cornelia de Zobulis for two out of three parts, namely, from the line or voice of Christopher in the aforementioned Countess Cornelia, and from the line or voice of Leonelli, founders of the aforementioned collegiate church, belong to the Most Reverend Bishop of the city of Parma, or his episcopal see, and to those

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invested by him, and thus are transferred to the aforementioned Provost John, invested by the aforementioned Bishop; therefore, due to the favor of the aforementioned Marchion Provost John and Countess Cornelia de Zobulis for two out of three parts, the legitimate foundation and endowment of the aforementioned collegiate church of St. Nicholas, and the right of patronage over the aforementioned collegiate church, and the right of presentation to the provostship, as well as to all priestly benefices or chaplaincies and to the clerical positions founded and established therein, have been established and exist by right.

This sentence, appealed by the aforementioned De Zobulis, was confirmed on July 5, 1709, before Cantarello. But since "an appeal has been made by the aforementioned De Zobulis of Parma regarding the aforementioned sentence concerning the right of patronage," the case was assigned to Master Pompeio, who again, "on May 21, 1710, in the full assembly of the Rota, proposed the matter, and after full and mature discussion, and in favor of the aforementioned Lord John, Marchion Provost, and Countess Cornelia de Zobulis, finally, with all and each right preserved... the definitive sentence of the preceding sentences of the Most Reverend Fathers Prioliet and Caffarelli, in all things, confirmed and promulgated." This sentence, as already stated, became executory on July 4, 1710.

Given these circumstances, it is not understood what Charles Cassoli, the procurator, previously alleged in his arguments, among other things, stating: "The final judgment of the Rota attributed two out of three patronal voices to Cornelia Zobuli, while one, as we have seen, was attributed to John, Marchion Zobuli." And elsewhere: "Upon the death of John, Marchion..."

[*Latin ed. p. 41*]

REGIEN. 41. To the priest and prebendary without a successor, and to both presbyters, it is clearly and evidently demonstrated that the voice pertaining to him has devolved upon Cornelia Zobuli, who, from two of the three voices attributed to her, has become the sole patron in all three voices. And again: "The prebendary, John, having died without a successor, his patronal voice, by law, devolved to Cornelia." The advocate either overlooks or does not understand how the matter was judged by the Royal Court, and furthermore, he falsely assumes that there exists a right to increase the number of patrons beyond three. But this should not be overlooked; rather, it must be continuously stated concerning those who succeeded in the voice of James. Therefore, it was then that the voice pertained to the Zobuli of Parma, for the prebendary John either did not possess that voice, or, certainly if he did, he was unable to transmit it to successors. The Holy Rota defined this. Furthermore, the lineage of the Zobuli of Parma ceased in Nicholas Zobuli, who was a prebendary, the last recognized member of the family, who passed away on June 26, 1802. From him, the voice of James

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was left by testament to his heir, Marianne Cagliari, from whom it passed to Baptist Cagliari, who, in this century, when the question of the provision of the prebendary was being considered before the Sacred Congregation of the Council, was peacefully recognized as the patron. But it is necessary to briefly explain this case, from which not only the above, but also what has just been said, are confirmed. Concerning the prebendaries: In the year 1837, after the widow of Nicholas, the Countess Eleonora Cassoli-Lorenzotti requested permission for a dispensation, favored by Ferdinand, to grant the prebendary to her son, Aloysius, who was about fifteen years old; stating, "to her nomination, another patron, John B. Cagliari, and another, the Bishop, to whom the voice belongs by donation from Leonelli de Zobuli," as is read in the legal document concerning the patronage, dated September 18, 1841. But the Bishop agreed to the nomination of Ferdinand Cassoli, under the condition that the prebendary be...

[*Latin ed. p. 42*]

42. The regulations concerning the institution were to be subjected to the jurisdiction of the Bishop, and the assignment of the care of souls was to be determined. On the one hand, there were the canons Bernerius and Denaglia, who claimed not only active but also passive patronage rights, and therefore considered themselves more worthy and capable than the young Ferdinand, and thus deserving of the assignment. After four questions were proposed, namely: I. Whether the heirs and descendants of the founders have a right to passive patronage, so that the institution should be granted in their favor in this case; II. Whether and how consideration should be given to the Most Holy Father regarding the dispensation of age for the cleric Ferdinand Cassoli; III. Whether the institution should be subject to the immediate jurisdiction of the Bishop; IV. Whether the care of souls should be separated from the institution; the Sacred Congregation responded to questions 3 and 4: "No, and the resolution of the Sacred Congregation of January 30, 1836, should be maintained." To questions 1 and 2, it responded: "The evidence should be delayed and assisted, especially regarding the descent of the Oratorians from the designated pillars in the Apostolic See, and also regarding the fulfillment of the condition concerning the second endowment, that is, regarding the increase of the endowment promised by the founders, which Pope Alexander had absolutely commanded to be carried out in order to obtain the privilege of passive patronage."

In the second proposal, which took place on July 4, 1842, the two previous points were again raised, while the two last questions were set aside. Furthermore, Cassoli, for his part, maintained that the descendants of the Zoboli family did not have a right to passive patronage; therefore, Denaglia and Bernerius were arguing in vain; and that Ferdinand Cassoli, having been legitimately presented as a patron, should be admitted. On the con-

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trary, Denaglia and Bernerius, in a prior agreement, defended the existence of the prior right of passive patronage; then, with equal zeal, they maintained that the dispensation requested by Ferdinand Cassoli was neither appropriate nor customary; and therefore, should not be granted; but finally, the dispute between them was about the institution: for each sought to exclude the other, so that one might be preferred over the other in the institution. Hence, each presented his arguments.

[*Latin ed. p. 43*]

REGIEN. 43 presented genealogies tracing back to James De Zobulis, and each emphasized their own merits above the others. Denaglia, in particular, asserted that he had obtained the name of another from their patron, namely L. B. Cagliari: for Cagliari, having been called by that previous name, granted through the favor of Ferdinand Cassoli, had offered his support to Denaglia. Under these circumstances, the B. E. P. P. responded to the matter with a decision: Affirmative regarding the first part – namely, that the right of patronage passively belongs to the descendants of the founders; – and regarding the second part – namely, whose favor would be required to grant the institution – that there is room for a new nomination through co-patrons. Regarding the second point: This has been provided for in the first. m m. The Cassolis, protesting, brought the case again on August 24, 1844; but in the meantime, Denaglia died, and Aloysius Guidetti, his relative, who had abstained from judgment until then, so as not to prejudice his relative, had entered the dispute, and was followed by a certain Suzari. Furthermore, on this occasion, with Denaglia deceased, L. B. Cagliari restored his support to Ferdinand Cassoli, who, as it is read in the S. C. C. syllabus, « brought two votes, namely that of Eleonora and that of L. B. Cagliari. » However, the advocate for Ferdinand stated, and this is very relevant to our matter, that there could be no doubt about the right of these two co-patrons. Having stated that the right of patronage must be transmitted to the heirs, and that this is proven « from the diploma of Pope Sixtus IV of the years 1480 and 1481, » etc.; he added: « This has also been proven by a Royal judgment that has acquired the force of law... which furthermore declared that one-third of the patronage, that is, the portion of Christopher, at that time belonged to Cornelia Zobuli, one-third to Leonelli, to the Bishop, and one-third to James, residing in Parma; for these last contested against the first in that judgment with every voice they could muster. And indeed, that voice, which, according to the disposition of James, should have been held by the elder James, remained for a long time with...

[*Latin ed. p. 44*]

44. REGISTRY. It is established that they remained in possession, observing the peace of the world, until the death of the last male

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heir, Nicholas Zobuli, on July 26, 1802, at which time the lineage of the Zobuli family ceased. And the speaker concludes: "Therefore, as is demonstrated by appropriate documents, the right passed from Christopher to Eleonora, granddaughter of Cornelia Zobuli, in whom the rights of the aforementioned Ferdinand Cesi were united. Furthermore, it is established that the right of James, from the last male heir, Nicholas of Zobuli, who died in the year 1802, with whom the lineage of the Zobuli family of Parma ceased, was left by testament to the heir, Marianne Cagliari, from whom it passed to John Baptist Cagliari, who today is rightly considered the patron, and to whom, in the present case, the jurisdiction of the institution, or at least a single possession, suffices, which is not called into question by anyone." With these premises, Ferdinand inferred that the institution should be assigned to him, and therefore also the dispensation concerning the defect of age. But three others vehemently opposed this: and it is worth noting diligently that this opposition was not due to a lack of right in those who were claiming, since they seem to readily admit this right, or at least certainly do not deny it; but due to the incapacity of the claimant: because "it is clear that the nomination was entirely null... because the nomination was given to an incapable person... because the condition was lacking which, from the beginning, was added by the Bishop, namely, the care of souls in the prebend... because, finally, with regard to the nomination of J.B. Cagliari, the dispensation depends on a condition, which it is improper to grant." But while Bernerius, Guidettus, and Suzari fought together against Cassolo, then, individually, they defended their own claims, each asserting that they were more deserving and possessed a closer kinship with the Zobulis family. However, they had not been fully concerned with proving their genealogies, Suzari in particular, who presented a genealogical chart without any supporting documentation.

[*Latin ed. p. 45*]

Regiae. 45. Whereupon the Most Holy Order wisely responded: "Extend and supplement the evidence concerning the genealogical trees." In Quarten, on June 7, 1845, after the case had been presented, it was discovered that I. B. Cagliari had changed his mind: "He pleaded, as can be read in the Sacred Congregation's Syllabus, that he had not made any nomination in favor of Cassolus, since, under the condition of a dispensation, which he now considers less equitable, he had fulfilled his obligation," and thus he transferred his vote to Guidettus. The prelate also declared that he favored Guidettus; therefore, Guidettus, supported by a sufficient number of patrons, and also by a blood relationship, which he had duly proven in this instance, contended for the institution. Bernierus, on the other hand, maintained that "the cause should be defined according to the law of passive patronage," and therefore he accumulated more votes in that sense. Finally, Suzari did not offer anything to support the confirmation of

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his genealogy; while Cassolus referred to the disputed actions in previous cases. Therefore, the Sacred Congregation, considering the doubts as to whether it should adhere to the previous decisions, concluded: "Adhere to the decisions, and explain the nominations within the quarter, either in favor of Bernierus or in favor of Guidettus, so that the one who obtains the greater number of nominations shall be given the institution. And so it was decided." Subsequently, Guidettus was named, whom the Most Eminent Prelates know to have been the last possessor of the prebend. Meanwhile, from the entire course of the case as described above, and without adding anything further, it is clearly evident that the division of the three patronal votes, as recognized by all at that time, was as follows: the vote of Leonelli belonged to the Bishop; the vote of Cristoforo belonged to Eleonora Cesi, or Cassolus-Lorenzotti; and finally, the vote of Iacobus was found to belong to I. B. Cagliari, from Zobulis in Parma. Finally, in order to prove the transmission of the vote of Iacobus to the Cagliari family, which is the main point of this paragraph, there is evidence of a sale of the patronage right, of which the deceased Prelate of Regiae wrote in a letter dated June 14.

[*Latin ed. p. 46*]

46. REGIO. January 1, 1885: The right to nominate to the prebend belongs exclusively to me; because the last patrons of Cassoli and Cagliari, having two votes each, and with a third vote being mine by right, they both sold their rights to the Jews, promising them certain advantages concerning the Collegiate Church. From this sale, according to the sacred canons, they lost the right of patronage due to the censures with which they were burdened. Furthermore, neither the family of Cagliari nor, much less, the cunning sons of Israel would have sold or relinquished the right, especially after a three-year consideration from the contract with the Cassolis, unless they were certain of its validity and ownership. Therefore, this agreement, although inherently nefarious, seemed to indicate the possession of a legal right. From all of this, it would seem that a similar conclusion could be urged upon the family of Cagliari, and as has been indicated above concerning the family of Cassoli, yet what point should be established, if the family of Cagliari remains silent, is not easily stated. Finally, turning to the last paragraph of this section, in which mention is made of certain claims made previously by the Zobuli and the De Medici, and of other matters concerning the present family of Monesi, it is necessary to speak briefly. Thus, at the beginning of the year 1885, when the provision for the prebend was being discussed before the Sacred Congregation of the Council, two brothers, priests, Aloysius and Sylvester Zobuli, and Angel Zobuli from Roncocesi, and he himself a priest, confident in the name's significance, claimed to be relatives of the noble Zobuli, the founders of the collegiate church; but in vain. For it was proven then, as it is today, that the lineage of the noble Zobuli ceased in Nicholas Zobuli at the beginning of

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this century. Furthermore, it was observed that the two brothers, Aloysius and Sylvester Zobuli, presented no documents pertaining to their claim; while Angel from Roncocesi did produce a genealogical chart, but therein he was certainly lying, where the connection of descent was made. Indeed, among his ancestors, he included a certain Francis, who, by renouncing the faith of his baptism, was the son of Paschal Agnes Cagossi.

[*Latin ed. p. 47*]

REGIEN. 47, born in February 1640; however, this man was mistaken for Francis and James Zobuli, the founder of the collegiate church; but the true distinction lies in their different vocations, for this Francis was born in Parma, of Sigismund and Mary De Zobuli, in the year 1656. Therefore, it is too much to say that Angel Zobuli was always content with the priesthood. Next comes De Medici, a name well-known to the Sacred Congregation. Furthermore, whether father or son, since the condition of both is the same, when De Medici first approached the Sacred Congregation to claim his right to the prebend, among other titles, he also asserted that he was descended from James De Zobuli, the founder of the collegiate church. And indeed, he produced documents which showed that from James, through Sigismund the elder, John Francis, Sigismund the younger, Jerome, and Mary, was born Catherine, who married a certain Parisetti; and from her, through Claudiana, Francisca, and Paula, who last married Cornitius Grimaldi, was born John Grimaldi, from whom came Aloysius, and from him, Victoria; who, in turn, was married to Anthony De Medici, a priest, Aloysius's father, and an advocate for the law. But from this very statement of descent, a strong argument is presented against the validity of De Medici's own claim. It must be remembered that it was stated above that James had left his inheritance to the eldest male, a layman and of higher standing, born of a legitimate marriage. And although it is true that women are sometimes admitted to the exercise of legal rights in the absence of men, even though the founders initially called only men, Ferraris, *Jus Patr.*, § 2, n. 11 and following; this is not the case here. For from De Medici's genealogical statement, it appears that he is connected to the agnatic line of James through Mary, daughter of Jerome Zobuli of Parma, who lived at the beginning of the 18th century; and at that time, other men of the same family were living; indeed, their agnatic line did not cease until Nicholas Zobuli, at the beginning of the present century. Therefore, o...

[*Latin ed. p. 48*]

48. REGENCY. Nothing of the right could pass to Mary, and therefore neither from her to her successors. Furthermore, 2°, it appears from the arguments presented above that it is established by fact that James, by the Zobulis of Parma, called Nicholas Zobulis, the last male of the family, and that from him, at the beginning of this century, it passed to the Cagliari fam-

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ily. Moreover, 3°, when it is a question of the right of patronage being left to heirs and successors, they must demonstrate to possess the same quality as the original patron. Furthermore, if the succession or blood relationship of the Medici is asserted, it does not establish the name of the inheritance, indeed, it is quite unlikely that it ever could; for it seems highly improbable that so many women, excluding men, who would almost always be found in each generation, could have inherited the familial and ambitious right of patronage. Finally, 4°, even setting aside all else, what is contrary to the Medici seems to be that they are more distant; for he would have existed in the eleventh generation from the founders, while, on the contrary, the Monesii, and even more so others mentioned above, were closer to the founders. The Monesii say and maintain that they live in the tenth degree of genealogy from the founders, the Zobulis. Furthermore, lacking other supporting evidence, Pitonius argues that, in establishing succession in a lineal and mixed right of patronage, proximity to the founder must be considered, as he states in his work *De controv. patron, alleg. X, n. 9*: "Where the right of patronage is restricted to a certain lineage, or even to several lineages, which is otherwise called the lineal right of patronage, where, namely, it was reserved for certain persons of the family, and their descendants... in this case, the more correct opinion is that the right of patronage is transferred gradually, and in successive order, according to the rules of fideicommissum, so that... the closer are excluded, the more distant, as is stated... *Rota coram Bichio, December 206, and in Mediolanen. Prioratus, February 15, 1700, §*. The doctrine, before the Reverend Molines, Dean... as in point Card. Anton. De Luca, *De Un. legal, article 23, number 15, at the end."

[*Latin ed. p. 49*]

REGIEN. 49, where it is rightly observed that the collective of agnates and the family does not have a line, but rather the collective of descendants and generations does have a line and a degree; and it adds – there – that in the case where a collection of several persons is distinguished by a line, those who succeed in the right of patronage will be those of the next line in order, according to the proximity of degrees; and this is confirmed by Balducc. Decis., and re iudic. tit. 3, disp. 37, n. 31. "Therefore, having set aside the claim of the De Medici, we must now turn to the Monesi."

Now, five brothers, sons of a certain Joseph Monesi, after a public citation, appeared before the Sacred Congregation of Rota, proclaiming the same rights, just as Charles Cassoli Lorenzotti did; for just as he, and in the same degree, claims descent from Timothy, son of James Zobuli. The five brothers Monesi were quickly joined by four sisters, the cousins of the aforementioned brothers, daughters of John Monesi. Therefore, according to the claim made by them, the family of Monesi would contend to be heirs, tracing its origin to Timothy. But Timothy, having received his name

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from Christopher's donation, it is clear from the foregoing that he had completely transferred his rights to Cornelia, and from her, who married Charles Cesi, to Eleonora and the family of Cassoli Lorenzotti; therefore, it follows that Nicholas and his daughter Camilla, who are contemporaries of Countess Cornelia, and from whom the Monesi are said to descend, had nothing to do with it. And although the Monesi claim that Nicholas was the eldest son of Alphonse, this is of no avail, because it would have to be proven; secondly, even if this were true, it could nevertheless be legitimately assumed that the eldest son was not left as the heir; finally, 3° whatever happened then, which is obscured by the darkness of antiquity, it is certain that the matter was decided by the Royal Court at the beginning of the 18th century, as is stated in Acta, Tom. XXI, fase. CCXLI. 4.

[*Latin ed. p. 50*]

50. REGION. The matter concluded with the Countess Cornelia Zobuli asserting that the entire sum of three thousand solidi belonging to Christopher had been paid, and therefore, Camilla was excluded. This conclusion appears the more sound, since the Monesi family had not properly presented evidence regarding their degrees and other necessities; for they certainly produced documents from parochial and municipal records, by which they demonstrated themselves to be descendants of Anthony Monesi; but concerning the preceding degrees, they produced no legitimate documents, but only certain excerpts, taken in summary form, which stated that they had obtained them from two different books. There, certain genealogical matters are confusedly presented; nothing, however, is indicated concerning succession and the rights of inheritance. Therefore, it is sufficient to have stated these things about them, since the aforementioned points, when compared with similar points against the De Medici family, also seem to apply to the Monesi family. And all of these things were said concerning the subject matter of the first doubt; but regarding the second doubt, something was elicited solely from the narration of the case itself. Indeed, when Count Charles Cassoli Lorenzotti requested assistance from the revenues of the praepositura due to family difficulties, the Apostolic Datary, knowing that the benefice of Saint Nicholas yielded annually 9,600 florins, and that only one-third of these could be reserved for the patrons, and finally considering that Charles was only one of three patrons; granted an assistance of 1,200 florins. However, Count Charles, presuming himself to be the sole and universal patron, and that the benefice yielded annually 18,000 florins, requested at least 6,000 florins, to be divided and made over to his sister and mother. With these points noted, the following doubts were proposed: I. And II. And in the case, whether it is established by law that the patron has a right, and in

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that case, whether the assistance should be increased.

[*Latin ed. p. 51*]

REGISTRUM. 51. RESOLUTIO. Sacra Congregatio, cognoscens rem sub die 18 Februarii 1888, censuit respondere: Ad I. Favore Ordinarii tantum. Ad II. Negative. Ex QUIBUS COLLIGITUR: I. In iurepatronatus ab initio reservato pluribus distinctis lineis, una linea potest ius suum dono dare aut transferre in alium, licet extraneum, quin ceteri patroni conqueri possint: quia tunc habentur tot patronatus, quot sunt lineae; et vox unius non transit ad alteram. II. Quando institutor unus cuique ius constituit, et unam lineam aut familiam, aut successionem designat, si decursu temporis contingat plures in ius fundatoris succedere, omnes in solidum patronum repraesentant, et ius a crescendi locum habet, altero deficiente. III. Certum est, patronum non posse valide transferre patronatum gentilitium in extraneum, in praeiudicium eorum qui a fundatore contemplati sunt et adhuc existunt; sed hoc fieri posse si de communi consensu isti approbent hanc translationem aut donationem. IV. Donationem et translationem in themate favore Episcopi omnibus praedita esse legalitatis punctis; nam ipse fundator donationem sui iuris perfecit; auctoritate apostolica donatio haec sancita fuit, et constanti praxi, a primis temporibus ad ultimam usque vacationem, indesinenter confirmata. V. Ius patronatus ex sacrorum canonum sanctione vendi nequit; ita ut patroni, qui secus egerint, excommunicationis et interdicti poenis subiiciuntur, et ipso iure patronatus privati sunt. VI. In themate ultimi patroni apud quos erant duae ex tribus vocibus, cum censuris irretiti fuerint ex venditione facta, ius proprium amiserunt in poenam; et beneficium integrum declaratum fuit liberae collationis Ordinarii.

[*Latin ed. p. 52*]

FROM THE SACRED CONGREGATION OF BISHOPS AND REGULAR CANONS OF THE VENETIAN PRIVILEGES, February 24, 1888. SUMMARY OF THE CASE. In Venice, within the walls of the Priory of the Order of Jerusalem, there exists a garden with an attached house, cultivated by a certain Anthony Rossi, along with his family, who reside in said house. In the month of August of the year 1885, the wife of said Anthony being gravely ill, the parish priest of St. Francis, within whose parish the palace of the Grand Prior is situated, administered the sacraments of Confession and Holy Communion to her, in the form of Viaticum. The illness had progressed so rapidly that the parish priest was present to administer the extreme unction to her, when the Grand Prior of the Order, having learned of the matter, sent his own conventual chaplain to the aforementioned parish priest, to delegate him to assist the woman, who was already near death, and furthermore, to inform him that without his consent, he could not exercise any act of parochial jurisdiction over the sick woman, since she resided within the walls of the Priory, and this

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was in accordance with the privileges enjoyed by the Order. To this, the parish priest was astonished, especially because he knew very well that in the priory church, neither the Most Holy Eucharist nor the Holy Oil was kept, and that the aforementioned chaplain had not been approved to hear confessions, nor did he have the faculty of administering the blessing in articulo mortis. The matter was reported to the Patriarch, who made an appeal to the Sacred Congregation of Bishops and Regular Canons, and invoked the Constitutions of Gregory XIII, *Circumspecta in omnibus*, and those of Benedict XIV, *Inter illustria*, proposing several points for consideration.

[*Latin ed. p. 53*]

VENETIAN DISPUTATION ON SYNOPSIS. WHICH SEEMS FAVORABLE TO THE PATRIARCH.

The Patriarch argues, in order to demonstrate the necessity of serving the families, that those who live with the Order of Jerusalem, or are tenants and officials of honors and places belonging to the aforementioned Order, are subject to the jurisdiction of the parish priests. He cites, first, the Council of Trent, Session 24, Chapter XI, concerning Reforms. This is indeed a true statement. The Council, in the aforementioned place, decreed in order to eliminate abuses which were multiplying due to privileges and exemptions, that those decorated with the titles of protonotaries, or royal chaplains, or in any way attached to monasteries, should be entirely subject to the Bishops, as delegates of the Apostolic See, except for those (these are the words of the Council) who actually serve in the aforementioned places or military orders, and who reside within their walls and houses, and live under their obedience; or those who have legitimately and according to the rule of the same military orders made their profession, of which it must be known to the Ordinary; notwithstanding any privileges, even those of the religious order of St. John of Jerusalem and other military orders.

Soon after, the aforementioned decree of the Council of Trent was recalled for observance by Gregory XIII in the year 1580, who, in his Constitution *Circumspecta in omnibus*, speaking of the qualities which those who serve the Order of Jerusalem must possess, in order that they may be exempt from the respective Ordinaries as delegates of the Apostolic See, declared that these qualities must concur together, with these words: "except those who serve in the churches and other places" of the aforementioned military orders, and who reside within their walls and houses and live under their obedience, all of which "must be understood together; or those who have legitimately and according to the rule of the aforementioned Order made their profession, of which it must be known to the Ordinary."

Finally, Benedict XIV, at the request of the aforementioned Order, confirmed the decree of the Council of Trent and the subsequent Constitution

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of Gregory XIII, by his Constitution *Inter illustria*.

[*Latin ed. p. 54*]

In the year 1753, the Venetian authorities decreed: "All and each" privileges, immunities, exemptions, prerogatives... granted by "Our Predecessors, the Roman Pontiffs, and by the Holy See itself, or by Us, up to the present day, either in general or in specific terms, or obtained from the Emperor, Kings, and Princes, and other Christians, so that they remain in force, and have not been expressly revoked by the Decrees of the Council of Trent, nor by the Constitutions of the Holy Apostolic See, nor by any other ordinances in which mention is made of this Hospital, or which are contrary to the tenor of these Our Letters."

Indeed, from the statutes of the Order of Jerusalem, it is clear that the servants included those addicted to arms, who were to be from honest families; priests or brothers of obedience, so called because they obey the Prior, who accepts them for this purpose, so that they may serve in the priories or in the parishes or churches of the Order; and those who had taken a vow and were attached to the convent and the hospital, serving as servants by obligation, who served in the hospitals. And all of these are to be exempt from the jurisdiction of the parish priests, provided that they remain within the priories, because they have made vows. However, it must be said that this does not apply to those servants who receive a salary, and who do not make a religious profession. These are not included among the servants of whom the Council of Trent and the aforementioned Pontifical Bulls speak, and therefore they are not exempt from the parochial jurisdiction. This is confirmed by the Sacred Congregation of the Eastern Churches and the Holy Office, which decreed five conditions that must be met in order for those serving in the Order of Jerusalem to be exempt from jurisdiction, as can be seen in Oria on May 18th and September 7th, 1726, where the following is read: "Those serving in the religion of St. John of Jerusalem, in order to enjoy the benefit of exemption, must possess the following qualities: the first is that they must actually serve; the second is that they must reside within the houses and walls..."

[*Latin ed. p. 55*]

VENETIARUM 55: "Tertia, ut sub obedientia Ordinis vivant; quarta, ut professionem emiserint; et ultima, ut praedictas omnes qualitates coram Ordinario verificaverint."

Cum itaque luce meridiana clarius pateat familias inserviendums, Ordinis Hierosolymitani, vel inquilinos et bonorum locorumque ad praedictum sacrum Ordinem pertinens conductores, huiusmodi qualitates haud praeferre, Patriarcha concludit ipsos a parochiali iurisdictione eximi non posse.

Ad secundum dubium quod spectat, animadvertit, quod Benedictus XIV, citans Fagnanum, Caput "Quod super his. De maior, et obed." in

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suo opere: "De Synod, dioeces. I, IX, caput 15," docet quidem, Ordinarios leges et decreta edere non posse, quae privilegia a Sacra Sede Regularibus concessa laedant; nihilominus leges et dispositiones excipiendas esse tradit, quae curam animarum, sacramentorum administrationem et ea omnia respiciunt, quae regularium exemptionem minime offendunt.

Animadvertit insuper, teste Suarez, "de legibus," liber 4, caput XX, n. 10, Regulares teneri legibus obtemperare et decreta generalia observare illius Dioecesis, in qua morantur, casu, quo aliter scandala vel difformitas ab aliis dioecesanis evitari haud possent. Ratio est, quia dicta privilegia in bonum cedere debent et aedificationem inservire, et non contra malum importare et esse ad destructionem.

Ex quibus deduci posse censet, Regulares ad externam ecclesiarum disciplinam et ad observantiam illorum decretorum teneri, quae Ordinarius ad scandala impedienda conferre putat. Quod conforme videtur doctrinae a Sacra Congregatio Concilii traditae in Ugentia, diei 2 Martii 1861, in qua, cum Sacra Congregatio perspicisset, ex regularium ab Episcopo decreto exemptione praeiudicium animarum et ab aliis ecclesiarum rectoribus difformitatem obventuram, hinc ad huiusmodi mala praecavenda, decrevit ut Regulares decreto ab Episcopo edito obtemperarent. Et in "Caputaquen.," diei 2 Augusti 1860, ubi...

[*Latin ed. p. 56*]

56. Among the Venetians, a dispute arose concerning a Bishop, who claimed proper ordinary jurisdiction over the places of Rhodes and St. Mauritius, against the Bailiff of St. Euphemia, who maintained that such places, especially those pertaining to the Order of St. Jerusalem, were exempt. The controversy was brought before the Sacred Congregation, and the following question was proposed: Whether the Bishop of Caputaquen can exercise all kinds of ordinary jurisdiction in the places of Rhodes and St. Mauritius; or rather, whether such jurisdiction belongs to the Bailiff of St. Euphemia. The Sacred Congregation decided that ordinary jurisdiction belongs to the Bishop over the clergy and the people, while that which is delegated pertains to churches that are subjectively united. From this resolution, it appears that the Patriarch possesses the power to enact any dispositions that have external discipline as their object. And such dispositions are founded on his ordinary jurisdiction, if they concern the clergy and the people; in the delegated jurisdiction, if they concern the external discipline of churches that belong to the Order of St. Jerusalem. THESE SEEM TO FAVOR THE ORDER OF ST. JERUSALEM. The advocate for the Order maintains that the right of exemption belongs to all those who reside and serve in the Order, even if they receive a stipend. For with regard to them, he asserts that the three primary conditions are fulfilled, as prescribed by the Council of Trent, Session 24, Chapter XL, concerning reform, namely, the service actually rendered, residence within the

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enclosure, and due obedience to the Superiors of the Order. Concerning these conditions, Gregory XIII, in the aforementioned Constitution, desired that they be fulfilled simultaneously, as can be gathered from these words: "all of which must concur together." It cannot be argued that obedience is lacking in this matter, either according to the Council of Trent or according to the prescription of Gregory XIII, because those who serve make vows. Furthermore, the advocate maintains that, for those involved, obedience arising from vows is not necessary, but servile obedience is sufficient; and he seeks to confirm this with the authority of Ferdinand de Escanno, who in his work, entitled "Propugna..."

[*Latin ed. p. 57*]

The rule of the Order of Jerusalem states: "Those words: 'under their obedience,' should not be understood as referring to religious obedience, but to servile obedience, such as servants have with respect to their masters; otherwise, those mentioned would not be servants, but brothers." Furthermore, it argues that those who are exempt from ordinary jurisdiction, not only those who serve the Order, but also the closest relatives who live with the servants, are exempt; both because they form the same family with them, and because it would be inconvenient and absurd if, for example, a father received the sacraments from a chaplain of the Order, while his son received them from the local parish priest; and that the former should be subject to the jurisdiction of the parish, while the latter should be subject to the same jurisdiction; since it is possible that both live not only in the same house, but also in the same room. And this is even more so because the intention of both the Council of Trent and of the Supreme Pontiffs in granting such privileges was that not only individuals, but also places should be exempt from ordinary jurisdiction, so that conflicts would not arise due to the concurrence of two authorities. Indeed, it is impossible to extend this exemption to those who form the same family with those who serve the Order, because if a son were born to a servant of the Order, he could not be baptized in the church of the Order, due to the lack of a baptismal font. However, there is no incongruity in this, with regard to the sacrament of Baptism, that the jurisdiction of the parish priest remains in place in the town of Fermo. Indeed, this does not violate the real and local exemption with which the Order of Jerusalem has been especially honored by the Supreme Pontiffs. And such rights were interpreted in this way in the aforementioned convention of December 26, 1777, after the arguments presented by both sides had been carefully examined. It was therefore decided that the privilege should apply not only to the Prior and other members of the Order,

[*Latin ed. p. 58*]

58. It pertains both to the inhabitants of Venice and to those persons

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who were either attached to them or were in their service, provided that they resided in the house of the Prior and other members of the Order. In this more general formula, which better corresponds to the true nature and character of the privilege, it must be understood, without any doubt, that it also includes those persons who, whether in the priory house or by the true and proper bond of family, are attached to the Prior or to one of the professed members. Regarding the second question proposed in the second doubt, it was considered that the church of St. John, since it does not have attached to it the care of souls, is not subject to the visitation of the Bishop, except in the cases prescribed by law. Therefore, it does not seem that the Bishop is bound to comply with his decrees; or at least, the Rector himself has the right to approve such decrees, or to have them carried out, as prescribed by the regulation promulgated by Anthony Colleoni, Prior of Venice, in the year 1793, where the following is read: "Decrees of any kind, issued by the Episcopal courts, shall not be put into effect, unless after the consent of the respective Prior has been obtained." Having explained these matters from both sides, the following doubts are to be clarified:

I. In what manner, and to which persons residing within the walls of the priory, is the privilege of exemption from the jurisdiction of the parish extended, in this case?

II. Can the Prior of the Order of Jerusalem reject those external regulations which the Patriarch, in order to prevent disturbances, deems it appropriate to issue, as a rule for the pastors and rectors of public churches, in this case?

RESOLUTION. After deliberation, the Sacred Congregation and the Religious considered it appropriate to respond on February 24, 1888, as follows:

To 1. Provided that...

[*Latin ed. p. 59*]

VENETIARUM: The prior's house is to be inhabited, as far as servants are concerned, affirmatively; but concerning their families, the gardener, and tenants, negatively. Chaplains of the prior's church must be approved by the Ordinary for the administration of the sacraments, and for the custody of the Most Holy Eucharist and the oil of the sick.

2. In those matters in which, by common law, by the most holy Council of Trent, and by Apostolic Constitutions, jurisdiction is granted to the Bishop over Regulars, negatively.

FROM WHICH THE FOLLOWING ARE GATHERED:

I. Chaplains adorned with the title of Protonotary, royal chaplains, etc., or in any way attached to monasteries, are to be entirely subject to the Bishops, as if to delegates of the Apostolic See.

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II. Those, however, are to be exempt from this subjection, who serve in churches or other places, or in military service, and who reside within their precincts and houses, and live under their obedience.

III. Or those who have legitimately and according to the rule of their military order made their profession; with this condition, however, that it must be made known to the Bishop.

IV. And such conditions or qualities pertaining to the Religious Order of St. John of Jerusalem are to be preferred, not disjunctively, but cumulatively, in order that they may enjoy the exemption.

V. Hence, families serving the aforementioned Religious Order, or the managers of property, and the tenants of houses belonging to the aforementioned Religious Order, are not to enjoy this exemption.

VI. The chaplain of the prior's church must be approved by the Ordinary for the administration of the sacraments.

VII. Bishops are not able to enact laws and decrees which would injure the exemptions and privileges granted to Regulars by the Holy See.

VIII. Nevertheless, a different judgment must be held regarding laws and decrees which concern the care of souls, the administration of sacraments, and all those things which least injure the exemption of the Regulars.

IX. The Prior of the Holy Order is not able to...

[*Latin ed. p. 60*]

60. The Bishops of Venice have issued decrees concerning these matters, in which, by common agreement, the jurisdiction over the Regulars has been granted to the Bishop, as decreed by the most holy Council of Trent and by Apostolic Constitutions. FROM THE DECREE OF THE HOLY CONGREGATION OF INDULGENCES OF THE THIRD ORDER OF SAINT FRANCIS OF ASSISI, it is granted to the members of the Third Order of Saint Francis of Assisi the faculty of receiving Absolution or Benediction even on the day preceding those feasts to which it is attached. To the members of the Franciscan Third Order, now called the Secular Order, it is permitted, nine times within the year, on certain feast days, to receive Absolution or Benediction with a Plenary Indulgence, not only publicly from their Superiors in the churches where the congregations of these members are established, but also privately during the administration of the Sacrament of Penance from any confessor. Although, however, the Apostolic See has already, by decree of this Holy Congregation for Indulgences, dated January 16, 1886, granted that the members of the Third Order may receive Absolution or Benediction, even on any feast day of precept that occurs within the Octave of the days to which it is attached, because on those days they are either legitimately prevented from attending the churches to receive, in common, the aforementioned Absolution or Benediction, or access to the Tribunal of Penance is difficult for them, especially in places where

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there is a lack of confessors; nevertheless, for these reasons, they have repeatedly petitioned Our Most Holy Lord by one or the other Moderator of the congregations of the Franciscan Third Order existing in various parts of the Catholic world, that He would deign to grant that the members of their respective congregations might also enjoy the grace of Absolution or Benediction in sacramental confession on the days preceding those feasts to which it is granted. And this was requested even more urgently, because...

[*Latin ed. p. 61*]

FROM THE SACRED CONGREGATION FOR INDULGENCES, Decree No. 61, a general decree of this Sacred Congregation, sanctioned on the 6th of October, 1870, stipulated that confession alone, or confession and Holy Communion, could be performed on the day immediately preceding that day to which a particular Indulgence is assigned. Furthermore, His Holiness, having already graciously accepted these petitions, now desiring to provide for all members of the Secular Third Order of Saint Francis of Assisi in this matter, so that none of them, as far as possible, may be deprived of this salutary benefit of Absolution or Benediction, in an audience held on the 21st of July, 1888, ordered that the aforementioned Secretary should benignly declare and decree, as is declared and decreed by the present decree, that a member of the aforementioned Order may participate in Absolution or Benediction on the day that the said Indulgence is listed in the Index of Indulgences for the Third Order, to be granted the day before, but not publicly, but privately only, namely, after the sacramental Confession has been completed, all other legally required conditions remaining in force. Contrary decrees notwithstanding. Given at Rome, from the Secretariat of the same Sacred Congregation, on the 21st of July, 1888. SERAPHINUS CARD. VANNUTELLI, Prefect. * S. ALEXANDER, Bishop of Oenensis, Secretary. FROM THE SACRED CONGREGATION FOR RITES: DECREE by which the feast of the Most Holy Rosary is adorned with its own Office, with Mass. Moved by the long-standing afflictions of the Church, and by the daily increasing difficulties of the times, the Most Holy Pope Leo XIII has not ceased to exhort all Christians everywhere, from the very beginning of his pontificate, to turn to the most holy Virgin Mary through the Rosary.

[*Latin ed. p. 62*]

62 FROM THE SACRED CONGREGATION FOR RITES - to be venerated and implored according to the prescribed rite. Among other things, He taught most excellently in His first Encyclical on the Rosary (September 1, 1883), saying: "The present needs of the world demand, more than ever, the powerful help of the Virgin Mary; the Rosary is the most suitable means for obtaining this help. Therefore, let every believer have recourse, in daily prayer, to the Blessed Virgin, invoking her with the angelic salutation, and let the prayers contained in the Rosary be recited devoutly and with under-

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standing, so that, through this devotion, the whole family of the faithful may be strengthened in faith and charity." Therefore, this Pontifical decree, which has been received with great joy and obedience everywhere, will undoubtedly bring great benefit to the Church throughout the world, and will demonstrate how much religion places its hope in the Virgin, how much salvation is offered through the Rosary formula, and how, in these times of Christian life, heresy and the calamities of the times are greatly remedied by the mystical light of Christ. Therefore, let us seek, with eager hearts, to meditate on the mysteries of salvation, so that, through the Virgin Mary, we may be led to the light of Heaven. (Encyclical of August 1884). Furthermore, as a most excellent fruit of this hope, a memorable event should now be celebrated, which God has shown this year, in the fiftieth year of the priesthood of Our Most Holy Lord: a truly wonderful example of public religion and faith, and a most beautiful demonstration of piety, which has brought forth countless joys for all classes of people, from every part of the world. All ranks of men, from the most distant lands, have striven to follow the Supreme Pontiff, the successor of the blessed Peter, in every way: through embassies, letters, and even long pilgrimages, offering gifts of great number and magnificence, of which it is truly said that they surpass the material and the work with the fervor of the will. In this matter, the goodness of God shines forth wonderfully.

[*Latin ed. p. 63*]

From the Sacred Rites and sixty-three virtues, which sustain great endeavors within the Church, He, by the light of His wisdom, shines forth; His counsel strengthens, His consolations confirm; He, who from evils themselves brings forth a rich harvest of good, and also the glory of the Church, which demonstrates divine power, so that the faithful, striving together, and with one mind and spirit, may be joined to the Divine and Supreme, by whom Orense is governed, and may conquer the spirit of their lives; and by the same bond may be united with the Pastor of the Church (Apostolic Letter, Consistory of November 25, 1887). Indeed, considering these things, the Catholic peoples, while the gates of hell daily become more daring in the war against the Church, rightly feel how greatly it is necessary to increase devotion to the most powerful Mother of God, to increase trust in her; so that, through the prayers of the Rosary, she may grant favorable help to the Christian name and the Apostolic See, remembering that the continuation and fulfillment of her gifts is not only a fruit of our goodness (Apostolic Brief, December 24, 1883), but also of perseverance. Therefore, to give thanks for the benefits received, and to more earnestly implore, the Most Blessed Father has decreed, and urges, that, as in previous years through His Encyclicals, and through the Decrees of the Congregation of Sacred Rites (August 20, 1885 – August 26, 1886 – September 11, 1887), the salutary rite of the Holy Rosary, especially

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during the entire month of October, be celebrated; and He commands and earnestly urges that all these things be done this year as well. And since He has already decreed more concerning the greater liturgical veneration of the great Virgin under the title of the Rosary; wishing to add yet another increase, He has adorned the sacred feast of the same Rosary, assigned to a Sunday, with a PROPER OFFICE, and has ordered that Mass be recited by both clergy on the first of October henceforth, according to the schema which, having been examined and approved by Him, was issued by the same Congregation of Sacred Rites on this day. On the ninth of August, in the year 1888, on the Feast of the Blessed Virgin Mary, the Snows.

[*Latin ed. p. 64*]

64. FROM THE APOSTOLIC PENITENTIARY: A RESPONSE CONCERNING THE SINGING OF THE AMBROSIAN HYMN. Certain Prelates in Italy have requested whether, on the occasion of the war being waged in Africa, the Ordinary of a place, where it is required, may permit the solemn singing of the Ambrosian hymn, if it is deemed fitting by the Italians, or to celebrate funeral ceremonies with Mass for those who have died in the war itself. The Apostolic Penitentiary, with the approval of the Most Holy Pope Leo XIII, responds to this request: It is permissible, on the occasion mentioned, for the Ambrosian hymn to be sung by parish priests and other ecclesiastical persons solely for the purpose of publicly giving thanks to God for the cessation of the war; however, after the Ambrosian hymn, only the common verses and the unique prayer for giving thanks should be recited, omitting any other verses and prayers; furthermore, it is permissible to celebrate the holy sacrifice of the Mass and other funeral ceremonies solely for the purpose of publicly offering a propitiatory offering for the souls of the deceased, without ecclesiastical persons reciting funeral prayers. It must be carefully ensured that none of these things are twisted to political ends. Furthermore, Ordinaries should abstain from such functions. Given in Rome on March 13, 1888.

RAPH. Card. MONACO

P. M. HYP.

Can. PALOMBI

S. P. Secretarius.

Regarding the doubt as to whether the last Sunday of next September, on which the Most Holy Pope Leo XIII has ordered the celebration of Mass for the repose of souls throughout the Church, should be understood as the 30th day of that month: the moderator of the Ephemeris received a

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response from the Sacred Congregation – Affirmative.

[*Latin ed. p. 65*]

65. LETTERS in the form of a Brief, from His Holiness Pope Leo XIII, by which it is ordered that a badge be struck, having the form of a cross, in commemoration of the fiftieth year of his priesthood. L -A-33 E O R Ï»E». ZPTJTTJ JRA.3Vr E E I XIII . 2S¿L¥12I¿LOJEIIA.2H3: That the years of Our age have so progressed, by a singular grace of God and so abundantly, that We have been able to celebrate the happy anniversary of the fiftieth year of Our priesthood, this, indeed, delights Us not so much for Our own sake, as for the sake of the Church and of this Apostolic See. For the very fact of this event fully and completely confirms how, with a wondrous fervor of piety and with how much consent of will, Catholic people honor and obey the Vicar of Jesus Christ, and how no difficulties of things or of times can disrupt or disturb the vicissitudes of offices and studies which exist between the Christian people and the Roman Pontiff. Indeed, from all parts of the world, wherever the name of Catholic is found, so many and such illustrious signs of love and obedience have been presented to Us, that it seems as though a certain competition has been instituted among the peoples, as to who can show greater devotion towards Us and greater generosity. We speak of things which everyone knows, and which We attribute to the Author of all good, namely God. Furthermore, there is no testimony of piety, no kind of service, which Christian people, having this opportunity offered to them, have not presented to Us. It is truly known that in many places, that day was a festive one, on which We celebrated the fiftieth anniversary of Our priesthood: that prayers and thanksgivings were decreed for Our life and well-being, as if for a public good; that many works of Christian charity were instituted in commemoration of that auspicious day; namely, aid was given to the afflicted, refuges were opened for girls, boys were received into schools, and slaves were redeemed from servitude. The venerable City of Ours is a witness, to which such a great throng of pilgrims has flowed for so many continuous months, who had access to Us, and who wished to express before Us their exceptional feelings of devotion. We have indeed seen many, differing among themselves in race, language, and customs, not only from the regions of Europe, but even from the distant shores of Africa, Asia, America, and Oceania, who have traveled to Rome to give testimony of their faith and of their equal obedience.

[*Latin ed. p. 66*]

66 Letters are being sent to the Most Holy Pontiff. This matter, which is wondrous in itself, is exceedingly pleasing to Us, who embrace all nations with one and the same charity. But there are also other services; which We remember and for which We are grateful: for We have received them with a heart so willing and so grateful, as they were presented with obedience and

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promptness. Indeed, We are speaking of gifts and of benefactions of every kind, which Catholic people from almost the entire world have taken care to offer to Us, as a tribute of piety. These are indeed numerous in number and varied in kind, differing in proportion to the diversity of places; some reflect the wealth and artistry of nature, others bear witness to the industry and skill of craftsmen: many are conspicuous in their material or workmanship, while others delight the minds of those who behold them, even by their very novelty. These gifts, having been collected and brought from all parts of the world, and touching every class of citizens, seem to be akin to the precious offerings presented to kings and princes; We have deemed it fitting to gather all of these together, and to present them for viewing in Our Vatican buildings, for the glory of the Apostolic See. And indeed, this has proceeded well and prosperously, and the outcome has been as We hoped; We are exceedingly pleased, and We offer many and heartfelt thanks to God, as is fitting.

But We also wish to express Our gratitude and remembrance to those men who have supported Us in the bestowment of honors. Although We know well that the enthusiasm of the people has been more fervent than it needed to be, due to the auspiciousness of recent events, We are not unaware that those men have wonderfully excelled in skill and industry in establishing associations, in welcoming pilgrims to Us, in delivering, arranging, and safeguarding gifts, and in all the duties of love and piety. We know that pious women have joined themselves to these men, who have wished to contribute their own part in expressing such sentiments towards Us. In these matters, We desire that a lasting testimony of both the event and Our benevolence remain with them. Therefore, We wish and command that a badge be made of silver and gold, in the form of a cross, but composed of eight sides, with four lilies interspersed. In the center of the cross, there shall be a small coin, on the obverse of which Our name and image shall be depicted; on the reverse, the pontifical insignia shall be expressed, and the words "Pro Ecclesia et Pontifice" shall be inscribed. The extreme parts of the cross, which are turned outwards, shall be adorned with lilies, which, together with the lilies in the cross, form the insignia.

[*Latin ed. p. 67*]

LETTERS 67, which benefit our Nation; but those which are reversed, shall be marked with "The Eve of the Kalends of January, 1838." As a sign of this honor, we grant that a band of silk, of a purple color, with a white and yellow line on each edge, shall be worn, adorning the left side of the chest of those deserving it. To all and each who are deemed worthy of such an honor, we impart, through the Apostolic Blessing, the hope of heavenly gifts, steadfastly in the Lord. Given in Rome, at Saint Peter's, on the 17th of July, 1838, in the Eleventh Year of Our Pontificate. M. Card. LEDOCHOWSKI. ENCYCLICAL LETTER from His Holiness Pope Leo XIII to the

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Most Reverend Brothers, Stephen Peter X, Patriarch of Cilicia, Archbishops and Bishops, and also to the beloved sons, the Clergy, Monks, and the People of the Armenian Rite, who hold communion with the Apostolic See. LEO XIII, POPE. VENERABLE BROTHERS, BELOVED SONS, Greetings and the Apostolic Blessing. The paternal charity, by which We embrace all parts of the Lord's flock, is of such a nature that joys, sorrows, and whatever happens anywhere in the Christian republic, are felt by Us intimately and perpetually. Therefore, just as a great and long-lasting sorrow had resided in Our heart, that some from the Armenian people, especially in the city of Constantinople, had separated themselves from your fraternal community, so now We rejoice with singular and fervent joy, that that division, by the grace of God, has been resolved. While We congratulate you on the restored concord and peace, We cannot refrain from earnestly exhorting you to diligently guard and increase this great gift of divine goodness. In order to achieve this, namely, that all may think and feel the same things concerning those matters that pertain to religion, it is necessary that all, as you do, remain steadfast in obedience to this Apostolic See; you, however, beloved sons, must faithfully submit to and obey your Patriarch and other authorities who rightfully preside over you. For indeed, to undermine this very religious concord.

[*Latin ed. p. 68*]

68. Often, the opportunity arises, whether through disagreements in public affairs or due to quarrels concerning private matters, for the faithful to be shielded from these things by that which is most important in you: obedience and submission of spirit to the supreme Prince of the Ottoman Empire, whose justice is evident to Us, whose desire for the preservation of peace is manifest, and whose excellent will has been demonstrated to Us by clear indications. Indeed, quarrels and discord will easily vanish from among you, if your minds and manners are firmly fixed upon those things which the blessed Apostle Paul, the Apostle of the Gentiles, teaches concerning perfect charity, which is patient and kind, which does not envy, which does not boast, which is not proud, which does not dishonor others, which is not self-seeking, which is not easily angered, which keeps no record of wrongs (1). Furthermore, this exceptional and perfect harmony among you will provide another great benefit, namely, that through it, as We have said, you may increase and more widely extend the fruits of restored concord and peace; for it will turn the eyes and minds of others towards you, who, although they share with you the common name and origin of your people, are nevertheless still separated from you and from Us, and are not enclosed within the sacred walls of that which We presume to be your Ovil. Indeed, seeing the examples of your concord and charity, they will easily understand that the spirit of Christ is alive among you, for He alone can unite His own so that they become one body. May they

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recognize this, and may they resolve to return to that unity from which their ancestors departed! When this happens, they will necessarily be filled with incredible joy, as they will feel themselves united with Us and with you, even with the other faithful who are scattered throughout the world under the Catholic name; and thus, they will feel that they are remaining in the mystical tabernacle of Sion, to whom has been given one of the divine oracles, that she may extend the tent of her dwelling throughout the earth, and spread forth the skins of her tabernacles. However, in order that this desired reconciliation may occur, it is primarily your task, Venerable Brothers, who preside over the Armenian Dioceses, to work diligently, for we know that you are not lacking in zeal to encourage, nor in instruction to persuade. Moreover, We wish to have those who dissent recalled through you, in Our name and with Our words: for it is not shameful, but rather most fitting, for a parent to call back children who have strayed from him and have been long awaited, and to meet them and open your arms to embrace those who return. We do not believe that your voices and persuasions will fall on deaf ears. We have hope for a favorable outcome, first, because of the immense mercy of God, poured out upon all peoples, and second, because of the docility and intelligence of the Armenian people themselves.

(1) Corinthians 13, 4-5.

[*Latin ed. p. 69*]

LETTER 69: Having once embraced the truth, it has been demonstrated by numerous monuments of history that one is prepared to return, should he feel that he has strayed from the right path. Those very ones, even, who perform sacred rites separately from you, boast that the Armenian people were instructed in the faith of Christ by Gregory, a most holy man, to whom the surname "Illuminator" was given, and whom they venerate as a parent and patron with singular devotion. Among the memorable events associated with him is his journey to the city of Rome, in order to demonstrate his faith to Pope St. Sylvester and to profess his obedience. Indeed, it is said that he was received by him with great kindness and was granted certain privileges. It is known that, with the same spirit in which Gregory had acted, many of those who afterwards presided over the Armenian churches, have, from their letters, from their visits to the city, and especially from the Synodal Decrees, demonstrated that they held this view. And it is certainly worthy of note what the Armenian Fathers decreed at the Council of Sis in the year 1307 concerning the duty of obedience to this Apostolic See: "Just as the body must obey the head, so too the universal Church (which is the body of Christ) must obey him who, by Christ the Lord, is constituted the head of the whole Church." These things were confirmed and more clearly explained at the Council of Adana in the same century. Furthermore, you are aware that, in the

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Florentine Council, a lesser matter was discussed. When the legates of the Patriarch of Constantinople approached our predecessor, Eugene IV, they said that they had come to the head, to the shepherd, to the foundation of the Church, asking that the head might have compassion on its members, that the shepherd might gather the flock, and that the foundation might strengthen the Church (1). And, presenting their symbol and their faith, they asked: "If there is a defect, teach us." Then, the conciliar Constitution *Exultate Deo* was issued by the Pope, in which he taught them all that he considered necessary to know about the Catholic doctrine. The legates, on behalf of themselves, of their Patriarch, and of the entire Armenian people, declared that they accepted and embraced this Constitution with a humble and obedient spirit, professing themselves to be true sons of obedience, and promising, in the name above mentioned, to obey faithfully the ordinances and commands of the Apostolic See. Therefore, Azarias, Patriarch of Cilicia, in a letter dated April 14th, 1685, addressed to our predecessor Gregory XIII, wrote truthfully: "We have found books of our ancestors concerning the obedience of Catholics and of our Patriarchs to the Pope."

(1) Labbaei Conc. Collect. f. suppl. Tom. v. 210.

[*Latin ed. p. 70*]

70. Letters to the Roman clergy, concerning how Saint Gregory the Illuminator was obedient to Saint Sylvester, the Pope. Hence, it has been the custom of the Armenian nation to receive legates sent by the Apostolic See for necessary matters with the utmost honor, and to fulfill their mandates with religious devotion. We are confident that this will be of great benefit, so that more of those who have hitherto been separated from us may be encouraged to seek union: but if any should be deterred or hesitant because of fear, let them know that they will find the Apostolic See to be deeply concerned for their welfare, and that, if they love it less than they should, they will be welcomed by us. Therefore, Venerable Fathers, let them consider what our Roman predecessors, the Pontiffs, have done, who never failed to demonstrate their paternal charity to the Armenians. Indeed, they always received those who came to them as pilgrims, or who sought refuge with them, with kindness, and even wished to open their homes to them. Gregory XIII, as is known, had intended to found an institution for the proper instruction of young Armenians; but although he was prevented from accomplishing this by his death, Urban VIII carried it out in part, for he received Armenians among the other foreign students in the great college that he founded for the propagation of the faith. We, at a time that may seem unjust, have been able, with God's help, to fully carry out the plan begun by Gregory XIII, and we have added sufficiently large buildings for Armenian students of Saint Nicholas of Tolentino, and we have properly established their college. All of this has been done so that due honor may be given to the Armenian liturgy and language, which are commended

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by their antiquity, elegance, and the abundance of writings. Indeed, it has long been the practice that one of your bishops should reside permanently in Rome, according to your custom, in order to initiate into the sacred mysteries those students whom the Lord calls to that purpose. In addition, a school for the teaching of the Armenian language was established long ago in the Urbanian College, and our predecessor, Pope Pius IX, took care that a teacher be appointed in the gymnasium of the Roman Pontifical Seminary, from whom our students might learn the Armenian language, literature, and history. The concern of the Roman Pontiffs for the Armenians did not remain confined to the boundaries of this city; for they sought nothing more than to relieve your Church from the difficulties in which it was involved, to alleviate the damages inflicted upon it by the injustices of the times, and to promote its well-being. It is well known that Benedict XIV was concerned to preserve the integrity of your liturgy, as well as that of other Eastern Churches, and to restore the succession of Armenian Patriarchs in the seat of Sis. The concerns of Leo XII and Pius VIII were also directed towards this end, in Rome.

[*Latin ed. p. 71*]

Letters 71: Within the Ottoman Empire, the Armenian people possessed a prefect of their own nation for civil affairs, just as other nations situated within the same dominion. It is not long ago that the actions of Gregory XVI and Pius IX are remembered, in order that episcopal sees might be increased in your region, and that the Armenian Primate might be distinguished in Constantinople by honor and dignity. This was first accomplished by the establishment of an Archdiocesan and Primatial See there; then, by decree, it was united with the Patriarchate of Cilicia, with the provision that the Patriarch should reside in that city, which is the capital of the empire. Lest the distance between places weaken the close bond that unites the Armenians to the Roman Church, it was providentially ordained that an Apostolic Delegate should be present in that same city, who would perform the duties of the Roman Pontiff. You yourselves are witnesses to the care that We have shown for your people, and We, in turn, are witnesses to the devotion shown to Us by you, the meaning of which We have received not once, but repeatedly. Therefore, since the character of the people, the customs of their ancestors, and the memory of all past ages draw the Armenians separated from you more strongly to this fortress of truth than they can be kept apart for a long time; therefore, the Apostolic See has always striven to maintain the closest connection with your nation, and if it has faltered, to restore it to its former communion; indeed, Venerable Brothers, you have ample reasons to persuade, and We have ample reasons to hope, that the ancient bond may be fully restored. This, of course, will be beneficial to the entire human race, not only for the eternal salvation of souls, but also for that prosperity and glory on earth which can be piously

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hoped for. For history testifies that among the sacred prelates of Armenia, those who shone most brightly were those who adhered most closely to the Roman Church, and that the greatest glory of the nation was in those centuries in which the Catholic religion flourished most widely. May God, who governs all things, and who calls and makes religious those whom He wills (1), grant that these things may come to pass according to our wishes and according to our judgment. Join us, Venerable Brothers and beloved sons, in humble prayers, that moved by His merciful grace, all those from your people who, having entered through baptism into the society of Christian life, are separated from us, may return to us, wise, with the same charity, united, thinking the same things (2). Strive for this.

(1) St. Ambrose, *In Luc.*, c. i, v.

(2) Philippians, II, 2.

[*Latin ed. p. 72*]

72 Let the blessed, holy, ever-virgin Mary, Mother of Christ, intercessor, stand before the throne of grace, and offer our prayers to her Son and our God (1). "Let the illustrious martyr Gregory the Illuminator also be joined with her, that the work begun by him, persevering through labors and the endurance of torments, may be completed and strengthened by divine assistance. Finally, and with our prayers preceding, let it be that the return of the Armenians to the Catholic faith may serve as an example and encouragement to others who venerate Christ, but have separated themselves from the Roman Church, that they may return from whence they strayed, and that there may be one flock and one Shepherd. While we pursue these things with our hopes and prayers, we impart to you, Venerable Brothers, and to all our beloved sons, the Apostolic Blessing, under the auspices of divine benevolence, with abundant charity. Given in Rome, at St. Peter's, on the twenty-fifth day of July in the year 1888, in the eleventh year of Our Pontificate. LEO P. P. XIII.

^e^ 9 - FROM THE HOLY CONGREGATION OF THE COUNCIL, LAUDEN. OF PAROCHIAL RIGHTS AND BENEFITS. August 21, 1886; March 24, 1888. Session 7, chapter 7. Concerning reforms.

COMPENDIUM OF THE FACTS. In a plenary meeting on July 7, 1860, the archpriest and parish priest of the Cathedral of Lauden admitted that he had habitually exercised pastoral care of souls within his chapter, but that two decrees, which had been in force for a long time, had ceased to be valid by a decree of July 11, 1791, by which it was ordered that parish priests of cathedrals be designated and constituted according to the common law, for other parish priests; and then, from another decree of April 1815, (1) the antiphon, which was said in the liturgy, was ordered to be sung on the

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new Armenian feast day of the sixth chapter of the canons.

[*Latin ed. p. 73*]

LODI. 73. Postquam, in virtute delibationis factae subsequenter decreto diei 8 Iunii 1805, declaratum est quod nullam curam habitualem capitulo reservatum est, sed totam curam prima capituli dignitati, sive Archipresbytero, commissa est. Quod ut magis et magis confirmaret, affirmabat, ab eo tempore non amplius Vicariatus presentationem et approbationem per examen, non amplius applicationem missae pro populo locum habere, et nullam demum onerum participationem in capitulo superesse. Praeter haec, 2°. Archipresbyter urgebat nullum ius esse capitulo percipiendi emolumenta parochialia, quae ex funeribus solent provenire. Sed capitulares, si quando interevenissent, duplum portionis, tam pecuniae quam cerae sacerdotibus datae, non autem participare posse de residuis candelarum ac intorticiorum, quae parocho integro cedere debebant, et cui a tempore novae constitutionis capituli iugiter cesserunt. Vicissim, capitulum, fundamento innixo, quod ante annum 1791 cura habitualis sibi certo competebat, huiusmodi ius adhuc sibi integrum superesse mordicus sustinebat: neque decreta civilis auctoritatis hoc proprie importare, ut tale ius capitulis sublaturum intellegatur; quia, teste cl. pr. Nardi, id ex hisce decretis descendere non videbatur; quandoquidem ea exercitium iuris parochialis, potiusquam curam habitualem, respiciebant. Quo vero ad emolumenta funeraria, seu precise ad cerae spolium, hoc ante annum 1791 sibi competere incoepisse asserebat. Quod si, post id temporis, aliquando ab eo lucro exclusum fuerat; id contigisse affirmabat per vim ac iniuriam, et semper cum capituli protestatione. Propositis itaque dubiis: 1°. An cura habitualis parochialis et cathedralis ecclesiae Laudensis sit penes capitulum in casu?; 2°. An et ad quem spectent candelarum et intorticiorum reliquiae in funeribus, quibus capitulum collegialiter interest in casu?; S. O. O. responsum hoc dedit. Ad 1°. Affirmative; Ad 2°. Affirmative, favore capituli.

[*Latin ed. p. 74*]

74. LAUDEN. Secundum modum quod Ordinarius de bono et aequo statuere debet, auditis iis qui interesse habent. Archipresbyter, contrarians resolutionem, recursum protulit, sed ad novas eius preces responsum dedit: reponatur. Unde, juxta resolutionem Sacrae Congregationis, conventio de partium beneplacito Episcopo constituta et sancita est, quae usque ad postremos hosce a nobis a partibus pacifice observata est. Sed nuper, ad archipresbyteratum electo quodam Cavillini, capitulum ei proposuisse dicitur novam et graviorem conventionem, quam ipse, rei ignarus, primo acceptavit, sed postea, fraude detecta, ad Episcopum agens, ut alteraretur, quod et obtinuit. Verum, cum capitulum in dies nova et ampliora iura sibi competere clamaret, in vim suae parochialitatis habitua lis, archipresbyter

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documenta in archiviis conscripta invenit, pluraque consideravit, ex quibus consequi putavit, ex errore a Domino missum fuisse in priori causae pertractatione, quod capitulo habitualis cura inhereret, ideoque deficere fundamentum resolutionis, tam quoad l quam quoad 2 dubium. Institit itaque apud Sacram Congregationem ut iterum causa pertractaretur, et voti compos factus est.

Disceptatio Synoptica. IURA ARCHIPRESBYTERI. Favore archipresbyteri adnotatum fuit, quod primis ecclesiae saeculis, ac fervente persecutione, cum tota christiana plebs a propriis Episcopis dependeret, nec parochi essent, nec distinctae paroeciae; sed paroeciae nomen toti dioecesi aliquando tribuebatur, ex Eusebii historia ecclesiastica, lib. 4, cap. 24, aliisque. Aucto vero fidelium numero, plures in una civitate ecclesiae conditae sunt, ad quas Episcopus, diebus dominicis, modo unum modo alterum presbyterum ex ecclesia cathedrali mittebat, qui sacra munera obirent et populo praessent, qui ad illas ecclesias confluere. Hic status rerum diu perduravit, usque dum, scilicet, saeculo...

[*Latin ed. p. 75*]

LAUDEN. 75 In locis ruris et villis, distantes ab urbe, ut ad necessitates fidelium satisficeretur, primae paroeciae, sive districtus fidelium, cum ecclesia et proprio stabili et peculiari sacerdote constituerunt. Cf. Socratem, *hist. eccles.*, lib. 1, cap. 27; Tomassinum, *de vet. et nov. eccles. discipl.*, part. i, lib. 2, cap. 21 et 22; Muratori, *dissert.* 74, supra, V, ante, et al. Ex hoc, Episcopi paullatim ministerio pastorali immediate se spoliaverunt, quod stabiliter presbyteris commiserunt, parochis primum in agris, deinde in ipsa civitate constitutis. Sic officia, ut ita dicam, parochialia Episcoporum, ad parvum districtum sensim coarctabantur, qui vicos et domum cathedralem ipsam circumstantes unice comprehendebat, qui districtus paroecia cathedralis seu episcopalis vocari solebat. At, tempore procedente, hic pariter districtus peculiari curae alicuius sacerdotis committi placuit, qui capituli archipresbyter fuisse praesumitur; utpote Vicarius natus Episcopi in spiritualibus ex tit. *De offic. Archipresb.* in Decret. Quod reapse in ecclesiis cathedralibus archipresbyter censendus sit parochus natus, universam curam habitualem scilicet et actualem retinens, ad differentiam ecclesiarum collegiatarum, in quibus archipresbyter censendus est parochus tantummodo actualis, evincit Pitonius, *disc. eccles.*, 45, part. 2, innixus decisioni Rotali coram Cerro, 450, n. 2. Stante vero generali hac praesumptione, iuxta Pitonii aliorumque doctrinam, quod in archipresbyterum ecclesiae cathedralis, non autem in universum capitulum, transmigraverit animarum cura, sequitur, quod archipresbyter non teneatur probare, quod suae dignitatis ministerium pastorale sit adnexum; sed utique capitulum, si quidquam in petitorio proficere vellet, probare teneretur, quod sibi sit tributa animarum cura. Verum documenta hodierni archipresbyteri Lau-

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den, talia esse videntur, ut omnem capitulo praecludant viam suam.

[*Latin ed. p. 76*]

76. LAUDEN. To prove the intention. It is known from the most ancient documents that the town of Lauden was divided into several parishes as early as the 12th century, and that a cathedral parish, or episcopal parish, also existed. Among these parishes was that of St. Giles, which, in the 16th century, under Bishop Taverna, was united with the cathedral parish, in which the Prefect, who held the highest rank, administered the care of souls. But shortly afterwards, the Prefecture was deprived of this care and transferred to the canonry of St. John the Evangelist, with the authority granted by Pope Gregory XIII through a Brief dated December 20, 1580. This was not only confirmed by a decree in which the Bishop demanded the execution of this Brief, but also by the writings of the priest Ciseri, by the records of the Episcopal Curia, by the capitular statutes, and even by the diocesan synods held in the years 1619 and 1689. Furthermore, the documents added later show that the care of the cathedral church was considered to be annexed to the Prefecture, in the same way as the care of St. Giles. Moreover, if the care of the cathedral parish was annexed to the Prefecture, it is not understood how it could remain annexed to the Chapter. Also, the annexation of the cathedral parish to the Prefecture of the same order is shown, as is the later annexation of the care of St. Giles. Therefore, since the care of St. Giles appears to be annexed to the Prefecture, so that the Chapter has nothing in common with it, it follows that the same Chapter has nothing in common with the care of the cathedral. This presumption is corroborated by the fact that in the Apostolic Brief and in the Bishop's decree, concerning the new division and annexation of the actual care, mention is indeed made of the consent given by the Prefect; but neither consent nor even a trace of the Chapter's consent is found. In the aforementioned Brief, other things are present which seem to favor the intention of the archpriest, namely, that in it is read that the Prefect should be exempted from the impediments of the care, because...

[*Latin ed. p. 77*]

LAUDEN. 77 Indeed, because of its primary importance, the chapter is most strongly obligated to strive to assist the Bishop. Nor is this sufficient: but in the case where a canonry and a benefice should become vacant, the Pontiff has granted to the Bishop the power to appoint suitable persons to that benefice, and to provide for them freely and lawfully. All of these things clearly demonstrate that habitual care does not reside with the chapter, according to the opinion of Zamboni, volume IV, *Collectio*, chapter § 3, in Urbisvetera, on September 19th, and in Vicenza, on August 30th, 1766; and also according to Pignatelli, *Consilia*, 169, numbers 3 and 4. And rightly so: for the Council of Trent, in session 7, chapter *de reforma-

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tione*, decrees: "Ecclesiastical benefices, which are perpetually united and annexed to cathedrals, colleges, etc., should be visited by the Ordinaries of the place: who should diligently see to it that, through suitable vicars, even perpetual ones, the care of souls is commendably exercised therein." And more clearly, Saint Pius V, in his Constitution *ad exequendum*, wished "that said perpetual vicars should not be appointed at the free discretion of the Ordinaries, but should be nominated by those in whose churches they are placed, with the prior examination and approval of the Ordinaries themselves, or of their vicars." To this, it is added that, previously, concerning matters which will soon be mentioned, around the year 1490, the Bishop Pallavicini, desiring to hold the dignity of Archpriest in the chapter, obtained permission from Innocent VIII to establish that same dignity, and that, in addition to other things, the goods of the parish of Saint Agnes should be assigned to it, which, by this very act, would be united to that dignity. Furthermore, this annexation of the care to a special benefice, and not to the chapter, could not confer any parochial rights upon the chapter, and in reality, from that time onward, this pastoral ministry was exercised, as if it were its own, freely, and independently of the chapter, by the Archpriest in the church of Saint Agnes. Only, when the church of Saint Agnes was destroyed, the Bishop...

[*Latin ed. p. 78*]

78 Lodi. In the year 1571, it was decreed that the archpriest in the cathedral church should administer the sacraments to his own parishioners and perform other duties pertaining to them. And shortly thereafter, the apostolic visitor assigned a special altar to him in the cathedral, with the responsibility of maintaining and adorning it. Indeed, it appears that this transfer of the seat did not alter the nature or name of the parish of Saint Agnes. Furthermore, from the records of the curia, it is evident that the vicar was not always named in the parish of Saint Agnes; also, at times, a coadjutor was appointed to the archpriest, with the right of succession, by express will and consent of the archpriest, although there is no mention of the approval of the chapter. This would have been necessary, if a secular curate was found in the chapter. Precisely as has been demonstrated, at the end of the eighth century, there were two benefices in the chapter of Lodi: Saint John's, to which the care of the cathedral parish belonged, and Saint Giles', and the archpriestate, to which the ministry of Saint Agnes belonged. However, a new state of affairs began under Emperor Leopold Joseph I, who ordered that one of the three parish benefices be combined and attached to the praepositura, which from that time on was freed from the disposition of the Bishop, and with the careful care of souls annexed to it, and was conferred with prior agreement. When the Austrian Empire was succeeded by French domination, a new order of the chapters was carried out in the year 1805, by virtue of which, the praepositura was abolished,

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and only the dignity of archpriest remained; the praepositus then changed his title and assumed the name of archpriest parochialis; a title which he still bears. The archpriest maintained that these civil arrangements, both of the Austrian Empire and of French domination, were to be respected; and it is certain that Pope Pius VII recognized and ratified the appointment of the praepositus Beonius by Joseph I, by virtue of a friendly agreement. In the order of the chapter, prescribed by the French government, Bishop della Berretta, on April 18, 1806, to the chapter...

[*Latin ed. p. 79*]

LAUDEN. 79 signifies that to live is to proceed even in the exercise of apostolic authority. From all of these things, the archpriest is confident that the customary care [of the parish] has never been with the chapter. Finally, it is useless to invoke a judgment made in favor of the chapter, based on a resolution of the Sacred Congregation in the year 1860. Indeed, if a church has been gravely harmed, and a benefice, concerning its rights and goods, has sought and obtained restitution in full, this is always permissible, according to the common opinion of the Doctors, as found in Reiffenstuel, *De in integrum restitutione*, §§ II and III. Especially if it can be demonstrated that the aforementioned judgment was based on an error, a false supposition, and a hidden cause. Laws 1 ff. These judgments, without appeal, are rescinded, and I. 1 C. As in the case of false instruments and capitular acts, as stated in Reiffenstuel, *De sententiis et re iudicandi*, §§ IV and V. Therefore, since it appears that the aforementioned resolution of the Sacred Congregation was based on the supposition that the customary care [of the parish] with the chapter was true and certain in modern times, which today is demonstrated to be false; it is clear that the archpriest can rightfully demand restitution in full. Regarding the participation in the ceremonies at funerals, it was explained by a consultant whose judgment, it is lamented by the archpriest, was omitted from the official synopsis of the year 1860. Furthermore, the aforementioned consultant believes that the right to participate in the ceremonies does not belong to the chapter, for the following reasons: 1° because the constant observance, favoring the archpriest, has lasted for more than forty years, and during this time, the chapter has not appeared to claim such a right; 2° because the law of February 8, 1809, indeed requires that the rights and emoluments arising from parochial functions be protected by those who have the customary care [of the parish], where a legitimate custom exists; but in the city of Lauden, after the year 1806, such a custom appears to have fallen into disuse; 3° because the ministerial decree of March 24, 1814, took away these rights from the chapter; a decree which, through uninterrupted observance, has obtained the force of law; 4° finally, because it is a matter of general ecclesiastical

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law.

[*Latin ed. p. 80*]

80 LAUDEN. The canonical rule, to which either custom or special statutes can derogate, so that the rights of the chapter pertain to those who administer spiritual matters. Based on these reasons, the consultant concludes that no right concerning the participation in offerings can belong to the chapter; except in the case where someone is invited to funeral services. RIGHTS OF THE CHAPTER. On the other hand, in favor of the chapter, a matter has been decided by the *l legata*, which is considered true and against which no proof is admitted, even under the pretext of newly discovered instruments, according to *L. sub specie C. De re iudicata*. Therefore, restitutions to the former state must be granted with the utmost caution, lest endless lawsuits be drawn out and matters already decided vanish. Indeed, this point must be held even more firmly, if the arguments presented by the archpriest in his favor against the decided matter do not shine with the light of day; especially since the chapter today exists in the possession of its right, from which it cannot be removed, unless it is most convincingly proven that this kind of right is an illegitimate possession. However, the chapter contends that the archpriest lacks this abundance of arguments, and on the contrary, that reasons of the greatest importance favor it, especially those that consist in tradition. Indeed, not only the chapter and the Bishop, but even the adversary himself, in the prior treatment of the cause, seemed to have admitted a certain habitual care belonging to the chapter; and there was only doubt as to whether, after the laws of Joseph and the innovations of Grall, such a right had ceased. Furthermore, the common opinion, and especially the confession of the adversary himself, is of the greatest importance: for it is a well-known principle in law that one's own confession is the best proof, as stated by Martianus in *Tit. De confessis*, number 21. All of these acquire greater weight, according to the authority of Pitonius, in whose discussion, part 2, number 50, it is maintained as certain and undeniable that the chapter of Lauden at that time possessed habitual care. The archpriest, however, seeks to completely demonstrate his thesis and to overcome the chapter with many arguments.

[*Latin ed. p. 81*]

LAUDEN, on the 81st page, admits that, at the beginning, the cathedral was called the parish church, but adds that it was governed not only by the Bishop, but also by a prelate, and indeed by the entire chapter. This is argued from the fact that in the early baptismal records, which date to the time when the Council of Tridentinum was held, it is recorded that a certain person, who signed himself as a priest, administered the sacrament. Furthermore, it is noted that, according to the historical statutes of

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the chapter, prefixed to the 16th century, a distinction is made regarding prebends: this fact demonstrates that a parish benefice did not exist at that time. When the care of souls for the cathedral was definitively entrusted to the prelate, this is entirely unknown, and cannot be ascertained from the current archpriest. Moreover, if it is true that, in other moral matters, the existence of a habitual care is not presumed, but must be demonstrated, when it is attached to certain individuals; in the case of cathedral chapters, something else occurs; for them, a favorable presumption holds, since these chapters have always exercised the care of souls together with the Bishops. With this presumption existing for cathedral chapters, it is necessary to demonstrate, before they are declared to have a habitual and actual right to parochiality, when and by what authority this occurred. However, the archpriest in this case does not demonstrate this; the ancient documents he presents, in which one reads of a prebends or of a canonry of Saint John the Baptist, to which the care of souls of a larger parish is attached, are not conclusive; for such words may signify only the exercise of an actual care. Regarding the unions of the parishes of Saint Agnetis and Saint Aegidii with the cathedral at different times, although one of them, or even both, may have been attached from the beginning more to a particular prebend than to the chapter; nevertheless, since these two parishes have been annexed to the cathedral by more recent dispositions, and in a perfect and extinguishing union, they must, by this very fact, have acquired the nature and character of principal parishes, according to *Acta, Tom. XXI, fase. CCXLII*.

[*Latin ed. p. 82*]

82. LAUDEN. Consequently, they ought to have passed under the habitual care of the chapter. For this implies a union through suppression, or the extinction of a title, according to Leurent, *Formularium de Beneficiis*, page 3, question 996. However, the Holy Congregation, in a previous examination of the case, had already declared that the civil dispositions, whether of Joseph I or Napoleon I, could not deprive the chapter of its habitual care. Furthermore, if Pius VII ratified the presentation of a prelate, made by the Emperor, by virtue of a friendly agreement, or if the Bishop della Berretta, in the year 1806, endowed with apostolic faculties, proceeded in this matter; this does not imply that the habitual care, of which we are speaking, had been transferred to the chapter; but only that, from then on, the Emperor's right to nominate [a prelate] and the disciplinary innovations introduced by the chapter in the year 1806 were considered legitimate. Finally, the chapter maintains that it cannot be denied its habitual care, even if it does not appoint a parochial vicar, or if it does not pay a pension to him, as its vicar. Indeed, since the exercise of actual care is a special obligation annexed to the case, the chapter can be dispensed from this obligation of paying a pension. Moreover, from this it follows that the nomination of an

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archpriest cannot belong to the chapter; but he who is chosen to provide [a benefice] also disposes of the actual care of souls, as taught by Salzano, book 2, part 2, that in the provision of a canonry to which the care of souls is attached, the principal title, which is the canonry, must be considered and given precedence. Having considered both of these points, the following questions were proposed: I. Is there a basis for a complete restitution in this case? And the answer is affirmative. II. Should one adhere to, or rather, depart from, the decisions made in the first question in this case? III. Should one adhere to, or rather, depart from, the decisions made in the second question in this case? RESOLUTION. The Sacred Congregation of the Council, having carefully considered...

[*Latin ed. p. 83*]

LAUDEN. On August 21, 1886, the following prudent response was given: "Let the archpriest present more complete arguments in his favor, and, in turn, let the chapter respond more fully and clearly to the serious objections raised by the archpriest." Following the mandates of the Sacred Congregation, the archpriest first recalls that the care of souls in the cathedral has, from ancient times, been a responsibility of the prebend. This is, moreover, confirmed not only by the capitular statutes of the year 1452, during the episcopate of Bernerius, but also by the acts of the visitation of Bishop Scarampi on August 11, 1570; and also by the acts of the visitation held by Bishop Friderici on October 29, 1578, where the following is recorded: "It was inquired of Alberto, the prebendary, how he had obtained the prebend: he said that he had obtained it through the death of a certain Ludovicus de Fortibusa, during the time of His Most Holy Name, Gregory, and he presented letters; he said that these letters conferred the care of souls and that he believed this to be the original institution of the prebend." At that time, the prebend was also united with the parish of Saint Giles, since it was poor and small, and to this matter, the acts of the visitation held by the same Bishop Friderici on December 21, 1578, are appended, where it is written: "By the Most Reverend Lord Scarampi (Bishop), the parochial church of Saint Giles was united, either to the prebend itself, or to the parochial church of Saint Thomas: and in the meantime, the care was exercised in virtue of this union in such a way that it was alternately performed in the cathedral by the prebendary himself." Subsequently, the care of souls was transferred from the prebend to the canonry of Saint John the Evangelist, and this canonry was freely provided by the Bishop, as can be deduced from a document, which is alleged to have been excerpted from the acts of the Curia on March 16, 1723. It is important to note, above all, that while there is frequent mention of the annexation of the care of souls to the canonry, there is never any mention of the habitual care of souls by the chapter. As for the other question concerning the deprivation of the care of souls at funerals, against the

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chapter, a very long and peaceful...

[*Latin ed. p. 84*]

84. Lodi. Presenting the custom, the archpriest asserts that it is not in conformity with the truth. To demonstrate this, he produces the acts of the Synod of Lodi of the year 1619, in which, in chapter 26, it is decreed: "That henceforth, the chapter of our cathedral church shall not attend the funeral of any deceased person, unless each canon is given at least one candle of one pound, to those of higher rank, one and a half, and finally, to the prelate, two pounds... and when the parish priest is present, his portion shall be doubled, and it shall be given in a double candle, not in a single one." From this, the archpriest argues that, before that year, the chapter had not previously enjoyed the right to the candle offerings in the cathedral church. However, if, subsequently, and precisely throughout the entire 18th century, the chapter exercised this right, it did so neither effectively nor conclusively; and this is inferred from the records of the cathedral sacristy from the year 1713 to the year 1808, from which it appears that the wax used in the funerals was usually divided among the heirs of the deceased, the cathedral sacristy, and the parish priest. Indeed, the remainder of the wax was returned to the heirs, which wax burned around the coffin; that which was lit on the main altar was given to the sacristy; and finally, eight pounds of wax were regularly given to the canon and parish priest, four pounds for the funeral, and four pounds for the service itself. Furthermore, the archpriest notes that even in the most ancient times, there were disputes between the chapter and the custodians of the church regarding this matter, and to resolve these disputes, the Bishop Taberna issued a decree in the year 1588, which is recorded in the acts of the Visitation under the heading "Common matters for the parish priests of the cathedral church and of St. Agnes," by virtue of which he decreed that a third part of the revenues derived from *rochia* should be distributed to the custodians of the church, when they serve in any parish function, according to the ancient custom of the church. Moreover, he decreed that in the future, the custodians should receive only one portion of the candles, except for the seventh, thirtieth, and anniversary funerals, in which cases they should only light the second portion of the candles.

[*Latin ed. p. 85*]

LAUDE. 85 Finally, he seeks to demonstrate absolute independence, both with regard to habitual care and with regard to the ecclesiastical office, by citing a certain provision in the currently valid statutes, where, in Title 3 concerning theological offices, it is prescribed that, in the absence or impediment of the archpriest, and also when the archpriest's office is vacant, he (the theologian) shall succeed in all matters pertaining to the archpriest, except those which pertain to him as a hebdomadary, or those

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which simply belong to the parish priest. On the other hand, after certain preliminary remarks intended to remove any imputation of fraud from himself, and descending to the merits of the case, he observes that the objections raised by the archpriest are derived from two grounds: namely, from presumption and from certain facts. The presumptive argument consists in the fact that the archpriest believes that the entire care of souls has been transferred from the Bishop to the archpriest, to whom the spiritual ministry was most appropriately entrusted, and who was, in spiritual matters, considered the Bishop's vicar. However, the chapter responds that this presumptive argument cannot be considered sufficient to undermine a judgment that has passed into res judicata. Although it must be admitted that the archpriest was the Bishop's vicar in spiritual matters, as the Doctors commonly teach; nevertheless, as the same Doctors state in Bouix, *De Capitulibus*, Section 3, part 2, chapter 5, it is equally certain that in cathedrals, the care is usually united with the chapter. Indeed, Piton teaches in *Pitonius*, part 1, distinction 8, that the exercise of the care of the same cathedral pertains to the archpriest. Furthermore, he observes that in Laude, an ancient church which was destroyed by hostile arms in the year IV and rebuilt in a new location, the restored chapter no longer included the archpriest among its dignities; but the head of the chapter, to whom the care of souls had been entrusted for many years, was the prelate. However, Piton, in the aforementioned passage, states that "the name of prelate, by itself, does not imply the signification of a parish priest, although when..."

[*Latin ed. p. 86*]

88 LAUDEN. The parish still retains the name of the prebend: for it follows that the care of souls belongs to the college, and is exercised through the prebendary who is its head. Regarding the annexation of the care of St. Aegidius to the prebend, from which the archpriest argues his complete independence from the chapter, consider the passage which, according to Leurenius, *Form. benefic.* part. 3, q. 966, teaches that a destructive union of titles, by which one benefice is extinguished and united to another, does not abolish the rights, nor alter the nature, of the principal benefice. Therefore, if the care of St. Aegidius pertained to the prebend only in actuality, and not habitually, then that union of St. Aegidius does not imply that the prebend has acquired the act and habit of care, or has changed its nature: but rather, it should be maintained that the care of St. Aegidius remains united to the prebend, just as it was truly united to the cathedral, that is, in actuality, and not habitually; lest it be said that the prebendary exercised the ministry of souls in one and the same parish in a different way and by a different title. Moreover, it is not absolutely true that the parish of St. Aegidius was simply united to the prebend; since, according to the Brief of Gregory XIII of the year 1580, it is clear that the union was made with the

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cathedral, rather than with the prebend. Nor should it be said, because the care of souls was separated from the prebend and assigned to a canonry of St. John, that anything more was transferred than the actual exercise of that care. For if the care of souls were inherent in the prebend both actually and habitually, then that benefice would already have been burdened with a double obligation, namely, choral and parochial service; and therefore, since the benefice is for the sake of office, part of its endowment should have been assigned partly for the sake of the choral office, and partly for the sake of the parochial ministry. And therefore, when the ministry of souls was removed from the prebend, its endowment should also have been reduced, and united to the new canonry; but this was not done. Therefore, from the fact of the translation, it is rather inferred that the care of souls adhered to this or that benefice, not in a habitual sense, but only in an actual sense.

[*Latin ed. p. 87*]

LAUDEN. 87. Nor must that expression be understood as hindering the administration of souls, for it must be understood of actual administration, while the habitual care always remains with the chapter, as decreed by the Sacred Roman Rota, decision 214, paragraph 5 and following, cited by Buratto; and in the *Recentiores*, decision 31, paragraph 9, part 4, volume 2, and decision 445, paragraphs 9 and 10, part 5. Furthermore, from the fact that the chapter does not nominate or present anyone to the prebend, or to the canonry of St. John, now to the archpresbyterate, it should be understood that the aforementioned care does not pertain to the entire chapter, because it is exercised by someone from its own ranks, as stated by Salzano, book 2, page 2, section 22. For the prebend or canonry constitutes the principal title, while the care of souls is a secondary and accidental matter; therefore, it pertains to the chapter to choose the administrator of souls, to whom the canonry or prebend belongs, and therefore, although the chapter has the care of souls, it cannot always nominate a parochial vicar. The lack of consent from the chapter is less of an impediment in the transfer of care from the prebend to the canonry of St. John. However, such consent is not required when the transfer, as in this case, has been decreed by Apostolic authority, or at least by delegated authority. Moreover, it has been demonstrated that the habitual care remained within the chapter with constant persuasion, not only in recent times, as can be seen from the confession of the deceased archpresbyter Parpanesi, but also in ancient times, as is evident from the cause of Funeraria, discussed in the 17th century, as reported by Pitonius in part 2, page 45, edition of Rome, number 1704. From numerous documents, it has been proven that the chapter provided for many things pertaining to the care of souls. Furthermore, it is the judgment that the habitual care resides within the chapter, as defined by the Sacred Roman Rota, decision 516, page 18, volume 2, *Recentiores*. Given that the

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habitual care formerly belonged to the chapter, it is argued that such a right could not have been taken away by the civil laws of Emperor Joseph II; therefore, it still considers itself to be in its legitimate and legal possession. This concerns the question of habitual care; as for the actual care...

[*Latin ed. p. 88*]

88 LAUDEN. Concerning the spoils [of the deceased], the chapter states that, according to the existing agreement, this is done only in those funerals in which the chapter participates collegially, and in which it is entitled to half of the wax, the other half being given to the archpriest. The chapter believes that it can claim this benefit, even independently of any title derived from habitual care, solely by virtue of its intervention, and especially considering the preeminence that the chapter holds over the parish priests, as well as the dominion and authority with which it is endowed in its church. However, beyond these points brought forward by the parties, it has been considered, from the beginning, that the dioceses and parishes were often called by their proper names. But after the thousandth year, the institution of particular parishes began to spread, and it was encouraged by the Council of Trent, session 24, chapter 13, concerning reforms. In this stricter or proper sense, according to Bouix de par. page 175, a parish priest is said to be: "one who is appointed to administer, by obligation and in his own name, the word of God and the sacraments to a certain number of the faithful, who, in turn, are somewhat bound to receive the sacraments from him." It has become common for this office to sometimes be vested fully and totally in someone; at other times, only in a titular sense, and not in actuality. In practice, a parish priest *in habitu* is the same as a parish priest *in potentia*; and the term *in habitu* signifies nothing other than that the parish priest, in fact, is prevented from exercising his care, although he has the power to do so, and that, if the obstacle is removed, he can also act. It does not inherently contradict the exercise of spiritual care being entrusted to two or more, or even to a moral body, Bouix, op. cit., p. 180; and it is clear that this has occurred in many places, and that the Sacred Congregation has approved it on more than one occasion, as evidenced by the document from Tivoli, January 18, 1757. Indeed, the Council of Trent did not absolutely condemn the entrusting of the care of souls in a church to more than one person, as appears from Chapter 18, session 24, concerning reforms. Nevertheless, it is more expedient to establish a single parish priest in each parish, and therefore, the Council of Trent...

[*Latin ed. p. 89*]

LAUDEN. 89. The Fathers decreed that canons, whenever they held the care of souls attached to their chapter, should exercise that care themselves; but they wished that it be entrusted to an individual person. And in this case, the chapter has habitual care, and not actual care; that is, it has

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the habit, or the power to exercise care, although it cannot, by virtue of a present positive law, actually exercise that power. According to this, habitual care would be nothing other than a certain potentiality for the pastoral ministry, which is inherent in the subject, but which cannot be transferred to action, unless there is some necessary cause. Furthermore, this potentiality can be present in a subject without any external sign or right; or even the opposite can occur. Indeed, chapters, which are obliged by positive law to absolve themselves from the exercise of care, often retain certain honorary or lucrative rights, such as tithes, the fourth of funerals, or the right of nomination or presentation to a benefice. Sometimes, they have even imposed upon themselves burdens, such as the provision of utensils necessary for the care of souls. It can sometimes happen that habitual care remains with the chapter, even though these rights or burdens are not found within the chapter itself. Thus, for example, the right to nominate a curate is such a conclusive indication of the existence of habitual care in the chapter, that the absence of such a right is considered by some Doctors to be the surest sign that habitual care is not with the chapter, as Lotterius states in Lib. 1, quaest. 28, n. 104. Even if the chapter does not nominate a vicar, and even if the Bishop confers benefices, canonries, and dignities, which involve the exercise of care, this does not prove that habitual care is not present in the chapter, as Pignatelli demonstrates in tom. IX, consult. 159, especially in nos. 15, where he refers to several decisions concerning the matter. And this is confirmed by the arguments presented in Comen, before Cerro, decis. 451, and by Pignatelli himself in tom. 9, cons. 151.

[*Latin ed. p. 90*]

90. LAUDEN and Pitonius disagree. 45. Therefore, Reinífest, in his commentary on the title concerning the office of a Vicar, number 26, notes that the institution of a perpetual vicar must be done by the Ordinary, "although it should regularly be done through the presentation or nomination of the principal rector, or of those to whose dignity or chapter the parish church was united." This implies that the institution of a vicar can, at least in cases of exception, be done in another way. The same can be said of tithes, the mortuary fourth, and similar rights or obligations: indeed, even if these are lacking, the habitual care can still belong to the chapter; in other words, the power or ability to exercise care can belong to someone, even if that person lacks external rights or obligations. From these things, it can be gathered that the nomination by the chapter to a benefice or canonry, so that the one nominated is considered and called a vicar of the chapter in the exercise of pastoral care, is a certain sign that the habitual care belongs to the chapter. However, the perception of tithes, the administration of parochial goods, the mortuary fourth, etc., are indeed indications of the existence of care in the chapter, but they are ambiguous and fallible signs: for these things can belong to the chapter from another title, namely, not

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from the union of the parish with the chapter and from the habitual right of care, but from some other reason. Reclusius, *Op. cit.*, part 1, title 4, on the erection of a Vicar, and title 5; Rota Decis. 516, part 18, volume 2, *Recent.*; De Luca, *De par.*, discourse 18. However, if there is a lack of nomination of a curate and a lack of other indications of habitual care in the chapter, but only the common law is considered, it seems that in a collegiate church, habitually, the care belongs to the college, and therefore the archpriest administers the care of souls in the name of the college; whereas in a cathedral church, he exercises it in his own name. The reason for this distinction is that the archpriest in a collegiate church is like the head of the college, not like a parish priest; whereas the archpriest in a cathedral church is responsible for the exercise of the care of that same cathedral, and is therefore considered a parish priest there. Pitonius, *discept.* 45; Reclusius, *Op.*

[*Latin ed. p. 91*]

LAUDEN, op. cit., title 5, concerning parishes; PIGNATELLI, vol. 9, consultation 150, in its entirety, especially number 12; SACRED ROTA, decree 450, number 2, Cerro. Furthermore, it has been considered, as repeatedly cited in RECLUSIO, title 4, number 39, that those expressions, which are often found in the collation or foundation of an archpresbyterate or another dignity – namely, "all manner of care," "with full jurisdiction," "independently of the chapter" – by themselves do not prove that the person holding that dignity possesses absolute and complete parochial rights; rather, such expressions are either exaggerated or are considered to pertain only to actual care. Having considered all of the above from both sides, the following questions have been proposed:

I. Is there a place for restitution in its entirety? And to the extent that it is affirmative.

II. Should one stand by, or rather, recede from, the decisions in the aforementioned case?

III. Should one stand by, or rather, recede from, the decisions in the second question in the aforementioned case?

RESOLUTION. The Sacred Congregation of the Council, on the day of March 24, 1888, decided:

To 1: No, and furthermore.

To 2 and 3: Provision is made.

FROM WHICH THE FOLLOWING ARE DERIVED:

I. A judgment, once rendered for the truth, should be upheld, so that no proof may be admitted against it, even under the pretext of newly discovered documents.

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II. Therefore, institutions should be granted with the utmost caution, lest endless lawsuits be drawn out and judgments become void.

III. In the first centuries of the Church, in every diocese, there was one church or parish, to which all Christians, not only of the city, but also of the surrounding villages, would gather on Sundays, and the Eucharist was distributed to those present, while to those absent it was sent by deacons.

IV. This church, which was the cathedral, possessed the following:

[*Latin ed. p. 92*]

92. LAUDEN. The *copum* was the official who presided over a group, who had his own senate or presbyterium, that is, priests who were subject to him, and whose duty it was to assist the Bishop in the governance and administration of the Church. V. As the number of the faithful increased, other, smaller churches were founded, which were not separately subject to a priest, but clerics from the church of the Bishop were sent to them each Sunday to administer to them. VI. However, in villages and towns, located away from the city, in order to satisfy the needs of the faithful, in the 4th or 5th century; and in cities, in the 11th century, the first parishes or districts of the faithful were established, consisting of a church and a specific, stable priest; so that at that time, the duty of the Bishops was limited to only the district surrounding the Cathedral, which was therefore often called the cathedral parish or episcopal parish. VII. But with the passage of time, even this district came to be entrusted to the special care of someone, and in Cathedrals, according to a more accepted opinion, the archpriest of the chapter was that person, who, as a born vicarius of the Bishop, according to the title *De Officio Archipresbiteri* in the Decretals, retained both the habitual and the actual care. VIII. Although it does not contradict, nor does the Council of Trent absolutely condemn, the entrusting of the care of souls to several people; nevertheless, it is more in conformity with the common good that in each parish, only one pastor be established. IX. The office of pastor sometimes belongs to someone fully and completely; at other times, it belongs only in a habitual sense and not in an actual sense. X. He is said to have a habitual care who, in fact, does not exercise that care, nor is he able to exercise it; but he can and should provide to some extent, so that it is exercised through someone under the name of vicarius. XI. The habitual pastor is not a true pastor; for the true pastor is not he who does not minister to the faithful the things that pertain to the care of souls, not only not by virtue of his office, but who does not even have the right to minister, but such a title is valid only for certain rights that are preserved for him.

[*Latin ed. p. 93*]

93 X II. The nomination of a curate by the chapter, apart from the pastor, is a certain argument that the chapter seeks habitual care.

XIII. The collection of tithes, the administration of parochial goods, fu-

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neral rights, and other similar matters, are indications of the existence of habitual care in the chapter, but these are ambiguous and fallible; for these things may belong to the chapter by another title.

XIV. If the nomination of a curate and other aforementioned indications are lacking, the archpriest of the cathedral possesses both habitual and actual care; but in a collegiate church, actual care pertains to the archpriest, while habitual care remains with the college.

XV. The reason for this distinction lies in the fact that the archpriest in a collegiate church acts as the head of the college and not as a pastor, and he exercises care in the name of the college, as its head; but the archpriest of a cathedral exercises care for that same cathedral, and therefore he is considered the pastor there.

XVI. It had been denied to the archpriest the restitution of what had been unjustly taken from him; therefore, with the favor of the chapter, habitual care was admitted, because, according to Pontius, disputation 50, part 2, at that time, the chapter of Lauden was already considered to possess habitual care.

XVII. The civil provisions, whether of Joseph II or Napoleon I, did not abolish the right of habitual care in the chapter, because there was no mention of it; but only from these can it be proven the right of nomination in the emperor. And the disciplinary innovations made in the chapter in the year 1806 and approved by Pius VII, were considered legitimate.

[*Latin ed. p. 94*]

94 ARIMINUM. CONCERNING THE SACRAMENTS AND FUNERALS. On March 24, 1888. Session 25, chapter 13, Concerning Reforms. SUMMARY OF THE CASE. Count Alphonsus Salimbene Muti, in the months of May or June of the year 1886, visited Ariminum and, for the purpose of seeking medical care, rented certain houses located near the sea and within the territory of the parish of Saint Nicholas; but on July 13th of the following month, his illness worsened, and he died. The question then arose: whether the jurisdiction over the sacraments and funerals concerning Count Alphonsus belonged to the parish priest of Saint Nicholas or to the cathedral parish priest. And because, in fact, and despite the claim of the cathedral parish priest, the other, namely the rector of Saint Nicholas, administered the sacraments to the sick man, and performed the funeral rites after his death, the cathedral parish priest also initiated legal action concerning the restitution of emoluments. SYNOPTIC DISCUSSION OF THE RIGHTS OF THE CATHEDRAL PARISH PRIEST. The cathedral church, having a patron, whom it has chosen, raises the question of common jurisdiction, appealing to a custom, lasting almost a century, and which is supported by synodal prescriptions, and which is entirely favorable to it. It should be noted, for a better understanding of what follows, that a different right has been established and approved

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for non-diocesan visitors, that is, for those from outside the diocese, and for diocesan visitors. Indeed, in more recent regulations, another special distinction is found, namely, for citizens who, leaving their district, enter a new one, and there die a few days or even a few hours later. Certainly, the broadest right in favor of the cathedral parish priest seems to be reserved for non-diocesan visitors, that is, for those from outside the diocese. And in truth, in the Ariminum Salucian Synod, held in the year 1602, in title "Concerning Funerals," chapter 4, it is stated: "If, however, they are..."

[*Latin ed. p. 95*]

"Concerning those who, being from elsewhere, happen to reside in any parish of the city, if, within the boundaries of which they reside, they have, within four days, taken a dwelling according to the laws prescribed by the municipal authorities of that city, we declare that they belong to that parish; the same is to be observed concerning servants, provided that, in either case, good faith is present."

Thereafter, a doubt arose as to whether, with a single act of taking a dwelling, those from elsewhere would, by law, belong to the parish in which they resided. This matter was clarified by the synod, as reported by the Bishop of Pavone in the year 1624, title 12, concerning funerals: "Because it has often happened that there has been doubt concerning those who reside in our city, as to whether, with regard to the reception of sacraments and burial, they belong to our cathedral, or to the parish churches, of which the inhabitants are members during times of infirmity or death; therefore, in order to resolve such doubts and controversies, we declare that only those belong to the parish churches who have taken a dwelling, or a part thereof, within their boundaries, for a year, or a greater part of that year, with the intention of receiving the sacraments and performing the duties pertaining to the parish."

"Therefore, when the parish priest hears that someone from elsewhere has taken a dwelling, as mentioned above, within the parish, he must inquire of him, at least before two witnesses, whether he has moved there with the intention of becoming a member of that Church parish, and of receiving the sacraments and exercising the other rights of a parishioner; and whatever response he receives, he must record it in his book of souls, adding the names of the witnesses who were present. We decree that such a record and the witnesses mentioned therein must be entirely believed."

Such provisions were found to be in effect and were confirmed in subsequent synods under Bishop Cessi in the year 1630, under Bishop Galli in the year 1660, and again in the year 1679; and in order to provide greater clarity, the following words were added: "So that that peace, which the pious Mother Church is accustomed to pray for, may also be fostered among

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the living, and that there may be no disputes among the parish priests..."

[*Latin ed. p. 96*]

96. Concerning established customs, let them be abolished: We decree and declare that foreigners, or those from elsewhere, if they become inhabitants of this city, shall be considered to have acquired a parochial domicile, either by renting a house, or even by intending to reside there for the greater part of the year, and by actually having taken up residence there. In the year 1711, another synod was held by the Bishop in Devia, where the distinction between diocesans and non-diocesans was openly approved. There it is written: "He who, being a diocesan, has rented a house in the city, after four days, acquires a domicile, and is subject to the parish in which it is located; this also applies to relatives of the parish priest, if they have come to the churches' houses with the intention of remaining. If, however, they should die before the fourth day from a fatal illness, their bodies shall be taken to the principal church. Vagrants, pilgrims, and foreigners, unless they have designated a tomb for themselves while alive, shall be buried in the cathedral church." But since that expression "vagrants" opened the door to objections, the same Bishop wished to clarify the matter in the following synod, adding this article: "He who, being a diocesan, has rented a house in the city for a considerable time and has begun to reside there, if, after four days from his arrival, it is doubtful whether he intends to remain, he is presumed to have come with that intention, and therefore, by presumption, he acquires a domicile, and is subject to the parish in which it is located; this also applies to relatives of the parish priest, if they have come to the churches' houses with the intention of remaining. If, however, they should die before the fourth day from a fatal illness, their bodies shall be taken to the principal church. " "Vagrants, pilgrims, and foreigners, unless they have designated a tomb for themselves while alive, shall be buried in the cathedral church." Moreover, when Bishop Massa was in office in 1742, the matter of funerals was again discussed in the synod, and the same decree was repeated: "Whoever comes from a diocese to the city, and there rents a house, or buys it, or occupies it in any other way, and begins to reside there, if, after four days from his arrival, he dies, he shall be considered a member of the urban parish, but..."

[*Latin ed. p. 97*]

ARIMINUM. 97. "Si quis ante quartum diem post mortem in cathedrali ecclesia sepeliri debet, ille ducatur in cathedralem, ad quam iure pertinunt peregrini, advenae, errantes vel vagi, dummodo, dum vivus, non constituerit sepulturam in alio loco. " Denique, synodus Ridolphi anni 1818, quae adhuc viget in Dioecesi, disposuit non aliter quam praecedentia. Sicut enim capitulo 5, § 3, de funebribus definit: "Cathedralis ecclesia, ut antiquitus habetur, haec iura habet: Civitates,

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fortalitia, palatia, tum municipium, cum praetorio, carceres, peregrini, advenae qui in domibus privatis, diversoriis, cauponis fortuito incolunt, ecclesiae subiacent cathedrali quoad sacramentorum perceptionem et funeris." Et in § 4 subsequenti: "Ut a medio controversiae tollantur omnes inter parochos, quae sequuntur sancimus: Iis exceptis, quae supra de cathedrali et nosocomio diximus, ius sacramentorum et funerum ad Parochum spectat, in cuius paroecia casu quovis, cuiuscumque sit aetatis, vel conditionis, moritur, si incolatus XXIV horarum praecesserit." Unde concludit patronus, ex allegatis documentis, satis et superque evincere distinctionem iurium, suaeque thesis confirmationem: idest, tres distinguendi casus, civium, dioecesanorum, et exterorum: cives funerari in ea paroecia ad quam se transtulerunt, si incolatus 24 horarum praecesserit; advenas dioecesanos pertinere ad paroeciam in qua domum conduxerunt, et non ad cathedralem, si post quatuor dies a domus conductione decesserint; demum advenas exteros ad cathedralem pertinere si fortuito incolunt, absque electo scilicet domicilio aut quasi domicilio. Atqui, comes Salimbeni, cum tantum valetudinis curandae ergo, Ariminum venisset, fortuito et absque electo domicilio seu quasi domicilio ibi incoluisse dicendus est; hinc necessario, juxta patronum, ad cathedralem pertinere debebat. Hac vero stante consuetudine, parochum loci, in qua comes mortuus est, non solum a sacramentorum administratione et funerum celebratione repellere, sed et a quartae funerariae Acta, Tom. XXI, fase. CC XLII.

[*Latin ed. p. 98*]

98. In Rimini. The advocate proves, by citing a resolution from the "Rotali" [a collection of papal decisions] in the Calendar, Fourth Class, February 2, 1612, number 376, part 1, from Pisaure, January 22, 1618, at Gravantium, Volume IV, number 1; from Barbosa, book 3, chapter 12, number 19; and from the "Rotali" decision 240, "Rezonico"; from these sources, it is established that "according to the custom of the city, the right of burying foreigners and travelers belongs to the cathedral; therefore, the fourth [a funeral honor] is not due to the parish priest, within whose boundaries the traveler dies." However, to best serve his case, the advocate urges that the most recent resolution of the Sacred Congregation of the Holy Office was given in a case very similar to the one that occurred in Rimini. For, when Cesildes Bartolucci, the wife of a certain citizen who had his residence in Cervia, came to Rimini, to her native city, to visit her mother and to seek medical care, and died in her mother's house there, the Sacred Congregation of the Holy Office, on September 5, 1846, declared that the funeral of that woman should belong to the cathedral, and not to the parish priest in the place where the woman died. It is of no avail to object that, more recently, on March 28, 1880, the Sacred Congregation of the Holy Office gave a different response in the case of the funeral of a Roman citizen from

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Florence. The advocate observes, in addition to other things that could be said regarding the matter, that in that case, the Sacred Congregation of the Holy Office responded to a consultation from the Bishop; and that the Bishop had stated that the Florentine had, for three years, built a house by the sea, which he inhabited during the summer months, and that, therefore, he could be considered as having a domicile in Rimini.

RIGHTS OF THE PARISH PRIEST OF SAINT NICHOLAS. Conversely, the following observations are made in favor of the parish priest of Saint Nicholas. There is not a single opinion among the Doctors of the Church regarding the funerals of travelers and sojourners. Some, indeed, maintain that foreigners and travelers should be buried in the larger church, or cathedral, in which, according to ancient law, there was a common burial ground: Pignatelli, Consult, canon. volume 1, section 141, number 1; Barbosa, part 3, chapter 25, number 22; chapter Ubicumque 13, question 2. Others maintain that they should be buried in the parish church, to which the deceased is subject.

[*Latin ed. p. 99*]

ARIMINEN. The place of burial for those who are passing through. St. Rota, cor., Seraph., decis. 1135; Riccius, Prax., etc., p. 4, res. 293. And this opinion is maintained by Gratian, Disputatio 94, no. 73, and Sperellus calls it the common opinion, decis. 87, no. 12 and following, especially concerning those who have stayed in a particular parish, or who have intended to stay there, or who have received the sacraments from a parish priest; Sylvius, v. Sepult., no. 8. Antonius de Batr., cap. 1, no. 9, De sepult. ; "because, as the aforementioned Gratian himself observes, the right to burial depends greatly on the administration of the sacraments, and that choice can even be made tacitly." Finally, there are Doctors who, making a distinction between those who are merely present and those who reside, teach that those who, like vagrants, pilgrims, and travelers, happen to reside in a region, wherever their death may occur, should always be buried in the cathedral church; but those who reside, either in a rented house or in a hospital, should never be buried in the cathedral church, but rather, properly, in the parish in which they reside. Thus, Sperellus, decis. 87, no. 14; Savorim Variar, eluc., tit. 2, cap. 11, no. 114; Cardinal Petra, tom. 2, com. in const. 9 Innocent III, sect. unie., no. 5; Mattaeus, and others, citing the resolution of the Sacred Congregation of Rites and Regulations in Fulginata, July 3, 1592; to which is added the resolution of the Sacred Congregation in Portuen, St. Rufina, and Centumcellarum, concerning burials and emoluments, June 23, 1832, § Ex. The same opinion is held by Ferraris, who, in v. Sepultura, no. 22, expresses himself as follows: "Pilgrims and travelers, unless they have chosen a burial place, are to be buried in the cathedral church; but those who are merely present or foreigners, and who have a residence for some time in a particular parish, are to be buried in that parish. Thus, the Sacred

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Congregation of Rites and Regulations, in Fulginata, July 3, 1592, wrote to the Bishop: Even by established custom, those who are merely present and travelers are to be buried in the cathedrals; and the others, in the parish in which they died, if they have resided there for some time." And below, no. 23, coherently with what he had said in the preceding number, thus...

[*Latin ed. p. 100*]

100. He continues: "Those who are students, servants, hired laborers, officials, or others of a similar nature, who reside in a house for a certain time, or who live elsewhere, if they have not chosen a burial place for themselves, ought to be buried in the parish where they resided and died; the common law is observed, and this custom is preserved, which is not only the best interpreter of the law in doubtful cases, as cited in I, 37 ff. De legibus etc.; but also overrides a clear law, chapter 11 De consuet." And indeed, it seems prudent that the parish of residence should enjoy a greater right, and the cathedral, with regard to the funerals of those who, although strangers, have resided for a long time in that parish, and have rented a house there. For although the cathedral church may, by accepted custom, have the right to administer the sacraments and perform funerals for strangers; this, however, seems to apply only to true and certain strangers, that is, to those who lack their own pastor and their own church; certainly not to those about whom there is no doubt whether they have acquired their own pastor and their own church. In such a case, it seems that the parish priest should be favored, for whom the common law applies, and who has a well-founded intention regarding the spiritual care and the funerals of all those who die within the limits of his parish; not the cathedral, which rather uses a privilege or exception. Therefore, the parish priest does not seem to be required to prove his right; rather, the cathedral church must do so: all the more so because it is the cathedral church itself that denies the acquisition of a domicile, and denies it contrary to positive indications, which suggest the opposite. Indeed, a long period of residence is, at least until arguments to the contrary are presented, a sufficient indication of the intention to establish a domicile, especially when combined with the circumstance that the person has not merely stayed superficially from day to day, but has rented a house or room for a month and indefinitely. These things, which pertain to the common law, applied to the case in question, would not seem to lead to a rash conclusion, that strangers, residing there, with regard to the reception of sacraments and funeral rites..."

[*Latin ed. p. 101*]

ARIMINI. 101. These [rights] pertain to the parish, and by no means to the cathedral. For those who dwell in the countryside, who may be able to visit not just for a day or a week, but for months or seasons in the place of their sojourn, do not seem to be able to be considered, like mere travelers

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and temporary residents, to be subject to the same obligations. Therefore, although the cathedral of Rimini, by parochial right, may have rights over temporary residents, it cannot extend these rights to those who dwell in the countryside. However, it is objected, and this objection seems decisive, that the synodal decrees and the most ancient custom favor the cathedral's intention: but if, in all matters, legitimate custom holds the greatest weight, it makes both sides of the case clear. However, it has been observed that synodal decrees, by themselves, cannot derogate from common law: and if common law grants to the parish the right over those who, for a long time, reside within its district, who rent a house there, and are therefore, as it were, subject to it by reason of a quasi-domicile; then neither can a diocesan synod establish the contrary. This, indeed, custom can do, but we will postpone speaking a little about this and its value. Meanwhile, regarding the synodal decrees, it is observed that there are distinctions made between a diocesan and an extra-diocesan resident: and the former is subject to the local parish priest more easily than the latter: so that if the former rents a house after four days, he is already fully subject to the local parish priest; while the latter, that is, the extra-diocesan, must be questioned before witnesses, and unless a clear declaration of his intentions is obtained, he must be assigned to the cathedral. I say that, indeed, some ancient synodal laws may have made special provisions; but this does not seem to be either revived in practice, nor asserted, nor established in the latest canons, by which the diocese has been governed for many years. There, it is said, without distinction between diocesans and non-diocesans: "Travelers and temporary residents, who dwell in private houses, inns, or taverns, are subject to the cathedral church with regard to the reception of the sacraments and funerals." Furthermore, those who dwell in the countryside, as mentioned above, and who come to Rimini for several months...

[*Latin ed. p. 102*]

In Rimini, those who reside in private homes, inns, and taverns do not seem to be able to be counted among those who enjoy the privileges of the cathedral church. Furthermore, several arguments suggest that this custom was neither constant, nor certain, nor peaceful. And, in the first place, the very synods, so often held, where there is widespread discussion of the discord that is deplored, and where norms and sanctions are repeatedly established to eliminate these conflicts, provide a strong argument that the rights of the cathedral church were neither certain, nor defined, nor peaceful. In addition, there is the testimony of many, whom the parish priest of St. Nicholas presents, and whom the Bishop commends, which demonstrates that not all have always been able to peacefully enjoy the privileges of the cathedral church; among these, a certain elderly man, John Boninsegni, stands out, who, after presenting four specific cases in which the cathedral church was excluded from the right to bury outsiders, concludes: "The

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supposed right of the cathedral church concerning the burial of outsiders has never been peaceful, but has always been accompanied by scandalous disputes." But, on the other hand, there are witnesses who favor the cathedral church, among whom are the parish priests Manzi, Mengozzi, and Bilancioni, and the canons Balsimelli and Gardini. In response, the parish priest of St. Nicholas states that Manzi has lost his memory, that the other two have not concluded anything of significance, and that the two canons, being involved in the matter, are to be considered suspect. Furthermore, as everyone can easily perceive, in these testimonies the matter is not merely about rural outsiders, although the doubt raised at the end concerns only them, but extends to all outsiders, and the very rights of the cathedral church are implicated. Therefore, the testimonies presented are not only valid, but also, by all the more, lead to the conclusion. The Ordinary states that all of this is based on truth. But the ambiguity of the custom favoring the cathedral church is particularly evident in the case of the funeral of the Florentine. When the Bishop of Rimini, Emo Battaglini, was in office, Pasquale Fiorentini, a Roman citizen who had built a small house near the sea in the parish of St. Nicholas, and who had been living there for three years...

[*Latin ed. p. 103*]

ARIMINUM. In the year 103, a certain individual arrived there, afflicted by illness, and died approximately twenty days after his arrival. This gave rise to a dispute. Assistance was certainly provided by the cathedral, although the parish priest of Saint Nicholas also intervened, and the funeral was likewise held in the cathedral; but the expenses were borne by the sequestrator. Because the matter was not clear to everyone, Bat taglini summoned several parish priests to him; and since the matter could not be resolved, nor the rights defined, he entrusted the examination of the case to two canons. Meanwhile, a new Bishop arrived in Ariminum, and he read the conclusions of the two canons, which favored the cathedral, but he could not be persuaded by them; therefore, he consulted the Sacred Congregation [Sacra Congregatio]. Regarding the funeral of the Florentine, the Congregation responded that this concerned the parish priest of the suburb; but regarding the other matters involved, namely the right to the funeral and the meaning of the synodal regulations, the Bishop was instructed to address the matter in the diocesan synod. Furthermore, from the entire history, one thing is certainly clear, namely that even in this instance, the cathedral church was unable to peacefully exercise its right. Therefore, if custom does not support the cathedral, and if the cathedral right, which proceeds primarily from custom, is uncertain, peaceful, or defined, then this supposed cathedral right must be relinquished. Indeed, it might be admitted that the cathedral has jurisdiction over the funerals of those travelers and sojourners who are completely without a fixed abode in

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the place, and who die there by chance, because, according to some doctors, the cathedral church exercises jurisdiction over these sojourners by virtue of common law. But it will never be permissible, in the absence of a legitimately prescribed custom, to extend this power to those sojourners who have taken lodgings for an extended period, concerning whom, moreover, it may be doubted whether they have acquired a domicile. This, indeed, if it holds true for sojourners in general, applies with even greater force in the special case of Count Salimbene; from which arose the present controversy. For the parish priest of Saint Nicholas, refuting the false statements contained in the chapter's report, recalled Count Salimbene for several...

[*Latin ed. p. 104*]

104 ARIMINEN. He spent several months, not just a few weeks, in a house near the sea; he arrived there on May 22nd, and died on July 13th, and he did not go to the baths, but rather sought the benefit of the sea air, because, as is well known, the disease of consumption is alleviated by it. Furthermore, the parish priest notes that this type of care is not brief, as is the case with a stay at the baths. But something else is also involved in this matter, which may perhaps resolve the question. Indeed, the privileges of the cathedral extend to the urban parishes; but the parish of St. Nicholas is located in the suburb, outside the city walls. Moreover, it seems that the rights which the cathedral church possesses within the walls are not to be extended outside the walls, as can be seen from chapter 17 of Decretum, from the commentary in 6. And although the cathedral of Ariminensis may wish to extend its rights to the houses and buildings near the sea, it does not seem appropriate to apply this to houses and villas located near the sea, such as the 'rusculum' inhabited by the Count Salimbene, which is almost a thousand paces from the city. Therefore, the parish priest notes, and the witnesses he presented confirm, that if there have always been disputes regarding the exercise of parochial rights between the cathedral and the urban parishes, even greater disputes have arisen between the cathedral and the suburban parishes, and the parish of St. Nicholas. Considering all these things, the Bishop concludes: it can be gathered that there has never been a peaceful custom, as the parish priest of the cathedral would have it; for if my predecessor had settled the question, I would not have requested it. It should also be noted that if the reasons given by the parish priest of the cathedral have some value, it is not known whether the same can be said for the 'rusculum', which is subject to the parish of the suburb outside the city, and is somewhat distant from it, and is located in open fields. With these premises, the following questions are to be considered: I. Does the parish priest of the cathedral have the right to administer the sacraments?

[*Latin ed. p. 105*]

ARMINEN. 105, concerning funerals for transient rural inhabitants who,

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within the boundaries of the parish of Saint Nicholas, Alet, die unexpectedly. 11. Whether there is a place for the restitution of expenses for the funeral of the Count Alphonsus Salimbene in this case. RESOLUTION. The Sacred Council, after discussion on March 24, 1888, decided to respond as follows: To I: Negative. To II: Provisionally. FROM WHICH THESE ARE GATHERED: I. Concerning the common law: Transient individuals and travelers are to receive the sacraments and are to be buried within the boundaries of the parish in which they die. II. Nevertheless, in this matter, much deference must be given to custom, and to the particular customs of each place. III. It frequently happens that transient individuals and travelers, who briefly reside in a certain place, if they die there unexpectedly, receive the sacraments in the cathedral church and are buried there; however, the parish priest of the parish within whose boundaries they died, if they resided there for some time, is also involved. IV. Such a custom must be established, certain, and peaceful, so that the aforementioned actions can be readily carried out. V. In case of doubt, one must favor the parish priest, for whom common law applies, and who has a well-founded intention regarding the spiritual assistance and funerals of those who die within the limits of his parish. VI. Synodal laws cannot abolish or derogate from common law. VII. In this matter, the resolution seems to favor the parish priest of Saint Nicholas, because the custom presented by the Cathedral Chapter was neither established, nor certain, nor peaceful; and because the deceased had rented certain dwellings within the aforementioned boundaries of the parish of Saint Nicholas, and resided there for some time.

[*Latin ed. p. 106*]

106. REGARDING PROCESSION AND FUNERALS. April 28, 1888. Session 25, Chapter 21, Concerning Rights and Privileges. SUMMARY OF THE CASE. In Barletta, before the collegiate church, the following is presented: The older church, which is also the mother church of all other churches, and which has recently been elevated to the dignity of a cathedral, is the parish church of Saint Mary the Greater. Following this is another parish church, that of Saint James, which was originally built by Benedictine monks outside the city gates, and later entrusted to the care of secular clergy. It was then enclosed by houses, became part of the city, obtained the status of a collegiate church, and shared the care of souls in the city with the clergy of Saint James. The third church, recently adorned with a chapter, is that of the Holy Sepulchre. However, this one does not properly belong to the dispute, although it awaits the outcome of the present judgment, by which it may either be aided or have its desires frustrated. These are the two churches that are in dispute. The chapter of Saint Mary the Greater has brought a case before the Archbishop against the chapter of Saint James, seeking to have the following defined: That the right to order ordinary and extraordinary processions within the

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territory of Barletta belongs to the chapter of Saint Mary the Greater; and consequently, that the chapter of Saint James, and other smaller churches in Barletta, should not be permitted to hold ordinary and extraordinary processions without the permission and intervention of the chapter of Saint Mary the Greater. Conversely, the chapter of Saint James, in a counter-suit, requested from the judge that the previously requested precedence, etc., from the chapter of Saint Mary the Greater, be declared illegitimate. The delegated judge, on January 9, 1886, delivered his judgment, by which the petition of the chapter of Saint Mary the Greater was rejected, as regards the right to order extraordinary processions.

[*Latin ed. p. 107*]

TRANI. 107. Burdened by this decision, the chapter of Saint Mary Major appealed to the Holy See. A Synopsis of the Dispute. DEFENSE OF THE CHURCH OF SAINT MARY MAJOR. Furthermore, the defender of the church of Saint Mary Major presents a three-part prayer; in the first part, he defends the matriarchal status of the aforementioned church; in the second, he demonstrates that the attempts of filial churches to invade the rights and privileges of the mother church have repeatedly been suppressed by all legal remedies for almost five centuries; and in the third, he finally attempts to weaken some of the difficulties presented by the opposing side. And, in the first place, from historical documents extracted by Ughellio in *Italia Sacra*, volume I, he demonstrates the origin of the church of Saint Mary Major, showing that from the beginning it was a parish in the city of Bari, under the name of Saint Andrew or Saint Mary of Auxiliaries; he notes that Saint Gelasius was ordained by Saint Sabinus, Bishop of Canusium, whose jurisdiction Bari was then under, in the year 493; he states that the church of Saint Andrew was consecrated. Meanwhile, in the year 790, Canusium was depopulated and destroyed by the Lombard king Authar, and the church and city of Bari, being as a church of no one, were immediately subject to the Apostolic See, governed by an archpriest as a prefect with jurisdiction. And although, due to the difficulties of that time, it seemed fitting to the archpriest prefect to subject his church to the spiritual administration of the Archbishop of Trani, nevertheless it did not cease to be outside of any diocese. Indeed, conditionally and limitedly, that is, under a certain agreement, as will also appear below, this church submitted itself to the ordinary of Trani. In the 12th century, during the religious controversies that occurred under Innocent II and the antipope Anacletus, the archpriest, clergy, and citizens of Bari vigorously defended the true Pope; and as a reward for calming the disturbances,

[*Latin ed. p. 108*]

108 TRANI. Innocent II elevated the church of St. Mary of Auxiliis to the status of a collegiate church and endowed it with numerous privileges.

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Among these, the following are particularly noteworthy: "Furthermore, the bulls and possessions shall be granted to the newly elected canons by the Chapter itself, without the knowledge or consent of the Bishop of Trani, to whom this ancient church of St. Mary of Auxiliis, after the destruction of Ozanum, of whose diocese it was a part, wished to subject itself, abandoning its own bishopric. And it is further stipulated: 'The Bishop of Trani shall have no other right in this matter, except that of visitation, of examining those who wish to receive confessions, and of ordaining. All other rights of jurisdiction which the ordinary of the place usually holds in his cathedral, except for the rights mentioned above, shall remain entirely with the newly established Chapter. And if the present or future Bishop of Trani should presume to derogate in any way from these privileges, which we freely grant to this new collegiate church of Barletta, then it shall be permissible to remove him from jurisdiction and to abrogate the old agreement made with him under these very conditions.'" Special attention should be given to the words "to abrogate the old agreement," which refer to the conditions under which the church of Barletta subjected itself to the ordinary of Trani. This agreement was observed by both parties for a period of three hundred years, and was subsequently confirmed by Pope Leo X in 1524 by apostolic letters and endowed with canonical sanctions. The prelates of Trani always swore to observe this agreement upon receiving possession of the property of the church of Barletta. However, Bishop de Hogeda attempted to violate this agreement; nevertheless, on May 12, 1861, the Sacred Rota defended the rights of the church of St. Mary and condemned the Bishop. On the other hand, ancient monuments show that the origin of the church of St. James is much more recent. Indeed, in the 12th century, we find monks of St. Benedict of Monte Sacro in Gargano possessing a hospice and the church of St. James near the gates of Barletta; and around which several houses were beginning to be built for the servants and those who ministered in the hospice.

[*Latin ed. p. 109*]

TRANI. A suburb called "Novum" arose, consisting of 109 houses. Indeed, Adrian IV, in his apostolic letters addressed to the Abbot of the Monastery of Monte Sacro in the year 1158, when enumerating the possessions belonging to the Benedictines, mentions "the church of St. James outside the gate of Barula, with its appurtenances, and all that belongs to it, both within the same city and within its diocese." However, it is proven that these monks were not entirely exempt at that time, from the words addressed to the monks, in which they are commanded to "receive all the sacraments of the Church from the diocesan Bishop;" that is, in the district of Barula, from the Archpriest, who exercised ordinary jurisdiction there. Nevertheless, the monks gradually obtained spiritual jurisdiction over the surrounding inhabitants, administering the sacraments, and thus

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gradually, and with a sense of responsibility, assumed and maintained the care of souls, but with the permission and consent of the Archpriest and the Chapter of St. Mary, as the defender notes. With the passage of time, due to a lack of monks and a diminished clergy, the Abbot of the Monastery of Monte S. Angelo, which was under the jurisdiction of the Archbishop of Siponto, requested that certain priests be sent there, so that they might, in place of the monks, guard the church and provide for the spiritual needs of the surrounding people, especially since at that time a plague was raging. Thus originated the secular clergy in the church of St. James. Things proceeded quietly for some time, until, in the middle of the 16th century, a particular question arose between the clergy of St. James and the Archpriest of St. Mary. For, since the priests sent to St. James by the Archbishop of Siponto were accustomed to hear confessions, they began to claim that they were, in effect, exempt as monks, by reason of their persons. However, this controversy was resolved when Sixtus V, in the year 1585, defined that the prior and the clergy of St. James were subject to the ordinary of Trani, by reason of the place.

[*Latin ed. p. 110*]

In Trani. At that time, there was no separation of the territory, and the care of souls was exercised promiscuously by the archpriest of St. Mary, together with the clergy of St. James, over the entire parish, which caused no small inconvenience and resulted in the detriment of souls. Therefore, in the year 1594, the clergy of St. James presented a petition to the Archbishop of Trani, during the course of the Visitation, stating: "Since the care of this territory is mixed with that of the aforementioned church and the Chapter of St. Mary, it can easily lead to inconveniences regarding the administration of the Sacraments to the sick; for each chapter could shift the blame to the other." They therefore implored that a portion of the territory be assigned to them, so that, having souls entrusted to them, they might be able to attend to their salvation. Having heard these things, the Archbishop, adhering to the decrees of the Council of Trent, decreed the separation of the territory and established boundaries, "while nevertheless preserving, in every way, the rights of the aforementioned mother Church, according to the canons that pertain to it, and protecting them in every way." The defender especially wishes to note the words in which the individuality of the care in this town is affirmed; and another, where the church of St. Mary is called the mother church; and finally, those in which the Pontiff wishes to preserve the rights of the mother church. From all of these things, it flows spontaneously, the defender argues, that the church of St. Mary the Greater of Barletta is truly and properly a mother church, accepted in the strictest sense, and that the church of St. James is a filial parish dependent on the mother church, inasmuch as it originated from a separation from the single parish of St. Mary the Greater that previously existed. Especially since, as

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has been said, the church of St. Mary the Greater always maintained the nature of a prelature and, indeed, a court of the first grade, as if it were equal to the Archbishop of Trani. Furthermore, there are other documents in which, although incidentally, it is consistently stated that the church of St. Mary the Greater of Barletta is designated as a mother church and not subject to any diocese, as in the apostolic letters in the form of a Brief of Gregory XIII.

[*Latin ed. p. 111*]

On the first day of April, in the year 1580, the Pope granted the altar of the Most Blessed Virgin a plenary indulgence. But this, above all, is gathered from the law by which this church was empowered to ring its bells on Holy Saturday before all other churches, as two sentences declare; the first, issued on July 21, 1645, by the General Vicar of Molfetta, against the clergy of Saint James; the second, pronounced on October 5, 1712, by the Lieutenant of the Tribunal of Rome, against the Eremite Regulars of Saint Augustine and others. Indeed, the precedence of ringing the bells is a sign of primatial status, as Leo X declared in the aforementioned Apostolic Letters, and it is indicated in the *Caeremoniale Episcoporum*, book 2, chapter 27; and this prerogative belongs to a more distinguished church, as Cardinal De Luca recognized in *Disputationes*, section 42, number 14, on precedents; and finally, the judge declared in the sentence against the Regulars, cited above, in which the primatial status of the church of Saint Mary Major, which was then being contested, directly and principally came into judgment and was recognized. To this is added the testimony of more than forty citizens, both clergy and people of Barletta, without any exception of elders, who testify, even under oath, that they know that from time immemorial, the church of Saint Mary Major has been considered the *Matrix* and primary church, and has always exercised precedence over all other churches of Barletta. In addition, the advocate adds certain supporting arguments, primarily drawn from the diplomatic documents of kings and emperors, who have on several occasions bestowed benefits upon the church of Saint Mary Major; and that these ancient benefits demonstrate the precedence of the church, is shown by Baldus, chapter "Cum olim," number 1, in *De Consuetudinibus Paris*, Council 31, number 39, volume 4, *L. Observa § Antequam ff. De Offic. Proconsulis*, and *Rota coram Merlin. Decis. 779, number 2, Recent, page 5*. Furthermore, the great historians, such as Cluver in *Italia Antiqua*, book 4, chapter II, and Ughellius, in the aforementioned place, announce the superiority of the church of Saint Mary Major.

[*Latin ed. p. 112*]

112 TRANEN, op. cit., page 887. Hence it is that all of the clergy of Barula proceed under a single, larger cross of Saint Mary, and the crosses of the

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churches of Saint James and of the Holy Sepulchre are smaller, being one-fifth the size of the larger cross of Saint Mary, according to the Roman Ceremonial; Pignatelli, Consultations, 73, under number 87, volume 8; and furthermore, the archpriest has the right, both in his own church and in others, to wear the stole with a green stole and green carpet, as recently confirmed by the Sacred Congregation on February 14, 1857; and, moreover, the orator continues, that the Paschal Lamb is found sculpted above the main door, in the choir, and near the Pontifical throne; all of which, the Most Holy Roman Congregation defined on May 24, 1636, and is gathered from chapter "Cum causa de prob." from chapter "Audientiam," 2 De praescriptis, and from the Rota Decis. 482, number 4, part 1, and Decis. 353, number 66, part 5. No less weighty an argument, the orator proceeds, for proving the status of a cathedral church, strictly understood, is derived from the fact that the church of Saint Mary the Greater has the right to lead all processions, both public and private, with respect to the other churches, and in particular with respect to the clergy of Saint James, as is evident from the judgment of the Rota, delivered on June 1, 1605, before Guicciardino, a right which has again come into discussion today, and about which, therefore, there will soon be an opportunity for further discussion. Finally, a last argument of great importance, the orator states, is derived from the privileges with which the church of Saint Mary the Greater enjoys over all the others, and which have been confirmed by the authority of Clement XI, who elevated this church to the rank of a collegiate church, and from the apostolic letters of Pope Pius IX, by which the same church was raised to the status of a cathedral. If Cardinal De Luca, in Disputationes, 43, De praerogativis, seems to doubt the status of the church of Saint Mary the Greater as a cathedral church, at least in the strict sense of the term, it is, according to the orator, because perhaps he was not aware of all the monuments which are presented today. Turning to the second part of his argument, the orator...

[*Latin ed. p. 113*]

TRANI. In the year 113, the following is noteworthy: the decree of the Archdiocesan Court of Trani, dated 1390, in which it is stated that, when the priests of the churches of *S. Sepulcri* and *S. Iacobi* had, without permission, carried out an extraordinary procession for the obtaining of rain, they had acted "to the detriment and prejudice of the Archpriest, the Clergy, and the Chapter." The Vicar General, considering "that processions ought to be carried out not by individual members alone, but by the entire body, with perfect order observed... which has been observed from time immemorial, and until the present time has been similarly observed... " and considering "that innovations ought to be avoided, and scandals eliminated, and that no indulgence should be given to the malice of men...," decreed that it was not permitted for the aforementioned clergy of *S. Sepulcri* and *S. Iacobi* to carry out processions without the permission of the

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Archpriest and the Chapter of *S. Mariae maioris*. And sixty years later, in the year 1450, the clergy of the filial churches again contended with the mother Chapter concerning the right to carry out processions, especially with the image which was kept in another church. The Archbishop of Trani, Cardinal de Ursinis, in favor of the Chapter of *S. Mariae maioris*, issued another decree of almost the same tenor: "The procession must be carried out with the permission of our Vicar, in agreement with the Church of *S. Mariae*, as the mother church and the principal church of that territory, and the procession must begin..." And here, the author notes how, from that time onward, the rights of the mother church did not involve the rights of the Ordinary, but could perfectly well coexist: hence, he concludes, there is nothing to prevent the same discipline from being observed even today, without causing offense to the Archbishop. But in the year 1523, the clergy of *S. Iacobi* again rebelled, and the Archbishop of Trani again restrained them, at the same time admonishing his General Vicar to ensure that the aforementioned regulations were strictly observed. In the year 1603, a new rebellion arose among the clergy of *S. Iacobi*: in fact, they were found to be carrying out processions freely; but immediately, a new Act, Volume XX, section II, page 42, was issued.

[*Latin ed. p. 114*]

114. TEARS. The suppression, by decree of June 20, 1603, of the Auditor of the Apostolic Chamber, which forbade the priests of St. James from, "under the same penalties and censures, daring or presuming to join or participate in a procession in any church other than the larger church of St. Mary, and this with the intervention and request of the aforementioned Chapter and canons, or clergy." But the clergy of St. James still did not comply, and hoping for a favorable outcome through legal means, they brought a lawsuit against the Chapter before the Vicar General of Andria, from whom they obtained a favorable judgment. But the Chapter appealed this judgment as unjust, presenting an appeal to the Lieutenant in the Roman Curia for civil causes, Guicciardini, who, on June 1, 1605, revoked the judgment of the Vicar General of Andria, declaring it null and void, and at the same time recognized and confirmed the rights of the Chapter of the church of St. Mary. But even this was not enough, for eighty years later, and precisely in the year 1686, the clergy of St. James, taking advantage of an opportunity regarding precedence in the association of the bodies of deceased priests, once again raised the controversy; but the Auditor of the Apostolic Chamber, C. A., approved Guicciardini's judgment in all respects regarding processions; and then, with regard to matters concerning funerals, he entirely decided in favor of the Chapter and the parish priest of St. Mary the larger church, regarding precedence, the elevation of the cross, and all other things. Despite these things, and even in disregard of another subsequent prohibition, the priests of St. James boldly held four processions, so

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that it was necessary to suspend them from divine duties and to declare the church of St. James forbidden, and to impose other penalties upon them. Defeated, but not broken, the priests of St. James, as the advocate stated, sought to achieve their goal through negative actions: abstaining from any procession and from any participation in other processions. Hence, another warning from the Auditor of the Apostolic Chamber on January 3, 1688. To this were later added the decisions of the Sacred Rota in Tranen, of March 18, 1689, and of the Matriculatum, of January 16, 1790, before...

[*Latin ed. p. 115*]

TRANEN*. 115 Coccia, Tranen. Concerning the privileges, on February 20, 1715, and again on June 5, 1715, before Scotto, and on the confirmatory day of November 19, 1717, before Ansaldo. After disputes with the priests of the church of St. James, the clergy of the church of St. Sepulchre, under the pretext of exemption, as if they were regular canons, began to rise up against the mother church; but they were immediately suppressed by a decree of the Roman Curia of March 8, 1731. Indeed, when it was reported to Clement XII that there were countless such disputes, he took the matter upon himself, and by apostolic letters dated the 15th of July, 1737, which begin with "In suprema," he declared the church of St. Mary Major, the mother church and a distinguished collegiate church, and, by his own motion and to extinguish the disputes, he granted to its chapter the private right of ordering processions. The defender demonstrated, with several arguments, that these apostolic letters were authentic, in order to remove any doubts of the opposing party. Furthermore, these are confirmed by what followed shortly thereafter. For the Fathers of the Order of Preachers presumed to celebrate a procession of the Most Holy Rosary "without the license and intervention of the chapter of the mother church, indeed, even under their own cross," contrary to the constitution of Benedict XIII, dated January 7, 1727. But when the archpriest and the chapter of St. Mary protested, the A. C. Auditor, on October 3, 1732, declared that "such a petition is just and consonant with reason"; and he warned, under a penalty of one thousand ducats, and with the threat of censure, the Regular canons "not to dare or presume to innovate or attempt, in any way, against the form and tenor of the aforementioned constitution of His Most Holy Paternity Clement XII, and of the aforementioned decree; nor to harass, vex, and disturb those same individuals in their quiet and peaceful possession." Some years passed, and again the prior and clergy of St. Sepulchre renewed the conflict. For, as they were accustomed to present two supplications each year, one on Holy Friday, and the other on the feast of the Finding of the Holy Cross, in the year 1750, they petitioned that...

[*Latin ed. p. 116*]

In 16 TRANEN, they obtained permission from the Archbishop, but they

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did not seek permission from the chapter of Saint Mary. Therefore, the chapter appealed to the Archbishop, so that the rights and privileges granted by the decree of March 8, 1731, already cited, which had been recognized, would be observed. The Archbishop declared, "the permission... was granted with the condition that the customary form be observed, without prejudice to the rights of the chapter and the collegiate church of Saint Mary Major." However, the clergy of Saint Sepulchre disregarded the Archbishop's declaration, and in the following year, 1752, they again, without permission, ordered a procession of Saint Mary. Therefore, the matter was brought before the Sacred Roman Rota, which issued a definitive judgment stating, "the aforementioned priests of the priory church of Saint Sepulchre, in order to perform the procession on the sixth day of the week, on Friday... notwithstanding their asserted exemption, are bound and obligated to privately request prior permission from the chapter of Saint Mary Major; nor is it lawful for them to perform the same procession without such permission. As for the other procession on May 3rd... the same priests of the priory church are bound and obligated, only with choral vestments and without a cross, to enter the aforementioned cathedral and collegiate church of Saint Mary, to attend the chapter and to proceed from there together with the aforementioned procession... and we impose perpetual silence on these matters, condemning the defeated to pay the costs to the victors." However, since the clergy of Saint Sepulchre still did not comply, it was necessary to involve civil authority, which enforced the judgment of the Sacred Roman Rota under the threat of civil penalties in 1754, and again in 1785. Furthermore, the advocate notes that it is easy to find continuous and tenacious uprisings against the rights of the cathedral, and that there is no other explanation than the attitude and disposition of the Tranensis court. For this court never showed any understanding, and often, with some deceit, it disregarded the privileges of the church.

[*Latin ed. p. 117*]

TRANI. In the year 1794, it happened that Mary, as the circumstances allowed, petitioned the Archbishop, so that the disputed privileges, both concerning processions and the right to confer canonries, might be removed; but the King opposed this. From then until these most recent times, matters proceeded quietly. But on June 7, 1853, the church of Saint Sepulchre, seeking to assert its equality with the collegiate church of Saint Mary, hastened to demand the abolition of old obligations. The chapter of Saint Mary certainly protested; and the Vicarius generalis of Trani communicated the chapter's insistence to the collegiate church of Saint Sepulchre; nevertheless, the clergy of Saint Sepulchre did not comply, and in the years 1863 and again in 1869, they proceeded with processions without permission. Following the example of the church of

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Saint Sepulchre, the new parish priest of Saint Nicholas in 1877 requested secular authority, so that he and the chapter of Saint Nicholas might lead a procession throughout the city in honor of the Most Holy Virgin Mary. From that time onward, the same chapter repeatedly held processions independently, although the mother church, in chapter meetings and in documents, both to this collegiate church and to the Archbishop, always, although in vain, protested; and therefore, the mother church finally decided to initiate a judicial process, and the present cause began. Furthermore, the advocate argues that it is clearly demonstrated, from the very decree of erection, that the clergy of Saint Sepulchre illegitimately assumed the title to rise up, based on the privilege and honor granted to them when they were constituted a collegiate church, in which these words are read: "Nevertheless, the foregoing rights and other rights of the chapter of Saint Mary, which currently exists, remain in full force over the clergy and the church of Saint James and Saint Sepulchre, and with respect to the obligations owed to that chapter and its church, nothing is to be considered altered by the granting of this present grace." And this was confirmed in the apostolic letters of the erection of the mother church into a cathedral. After these things, the advocate proceeded to refute opposing objections.

[*Latin ed. p. 118*]

In Grado, the matter is brought up. And in the beginning, the opposing party argues that the exclusive right to hold ordinary processions and to exceed the attributions of each chapter belongs to the Bishop, for by common law, this pertains to the Bishop; and therefore, this right should be considered as a privilege, and as such, it is odious and inadmissible, unless it is proven with full arguments. The advocate replies that the exclusive right to hold processions does not always exceed the attributions of the chapter, especially when the chapter belongs to the mother church or cathedral, as in the case at hand; and therefore, this right is inherent and intrinsic to the church of Saint Mary, and not a privilege. Furthermore, this chapter, with its preeminence, in no way harms or infringes upon the rights of other churches, for the Archbishop can permit or prohibit processions to the church of Saint Mary. The opposing party does not deny this; but argues that, after the permission of the Ordinary, inferior churches must approach the mother church, invite its chapter to the procession, and proceed in order. This right, favored by the mother chapter, is clearly established by numerous sentences and judgments. To the objection that, since the case concerns derogations from public law principles, which constitute the hierarchical jurisdictional order of Bishops, an apostolic dispensation was required, the advocate denies the premise; for no established right was to be derogated from, but rather, it concerned the inherent right of the mother church itself. Furthermore, when the church of Barula united

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with the church of Tran, an agreement was made, in which the Archbishop bound himself to observe all the customs, immunities, and privileges of the church of Barula; this agreement was confirmed by Leo X by a papal act, as mentioned, and subsequently by the Roman tribunals. And if in the decree Urbis et Orbis of the Sacred Congregation of Rites in the year 1703, it is said that Bishops are to announce processions, it is also stated that "conventions, pacts, and concordats approved by the Holy See, and customs, either memorable or at least centennial, are to be observed." To the argument that there was no reasonable cause for granting this privilege to the church of Saint Mary, the response is...

[*Latin ed. p. 119*]

119. The advocate argued, even conceding that the matter concerned a privilege, that there was a just and reasonable basis for it, namely that the church of Saint Mary was older than the town of Barletta, having been consecrated by the Roman Pontiff Saint Gelasius I, and subsequently endowed with countless privileges by Innocent II, and furthermore, that it was the oldest and only parish church. Moreover, the advocate maintained that this privilege, at the very least, had not been lost through disuse or abuse, after having explained what had been stated previously. And if, in recent years, anything contrary to the rights of the parish had been done, the chapter had always protested.

DEFENSE OF THE CHURCH OF SAINT JAMES. On the other hand, the advocate of Saint James first speaks of the right that his clients claim concerning the holding of processions, their prohibition, and their interruption; and then he discusses precedence at funerals. Regarding the first point, he states that, with the exception of the Bishop, no one is permitted to order public supplications, nor to define their order, place, or purpose; *Monacell. formul. leg. pract. tom. 1, tit. 5, num. 22; Barbosa De off. Episc. all. 78, n. 3 seqq.; S. Rituum Congr. in Elboren, apud Gardell. voc. Processiones, num. 528*. And this is because what is of public interest should not be subjected to the arbitrary will of any private individual. Therefore, any contrary custom or practice is not to be tolerated; *S. Rituum Cong. in Hispalen. ap. Gardel. voc. Processiones, n. 3585, et S. C. C. in Fulginaten. Processionis 20 Decembris 1856*. This should apply even more strongly in this case, since the Ordinary appears to be in perpetual possession of this right, as the court testifies: it is established, at least since the year 1836, that the lower clergy of Barletta, and especially the Chapter of Saint James, have always assisted the Ordinary in the ordering of processions. And the Archbishop states that the situation of affairs is entirely contrary to the desires of the Chapter of Saint Mary, since the clergy of Barletta have carried out and

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continue to carry out processions with the sole permission of the Ordinary.

[*Latin ed. p. 120*]

120. Therefore, to grant to the chapter of Saint Mary the exclusive right to arrange processions, alongside the patron, would be contrary to long-standing custom, the general discipline of the Church, and the ordinary jurisdiction of the Bishop. But neither can this right be granted to the chapter cumulatively with the Bishop. For such a cumulative exercise of power, besides excluding the aforementioned rights, which are assigned to the Ordinary by private jurisdiction, would furthermore be detrimental to practice and a cause of disputes and evils. For in this case, the chapter might impudently attack the authority of the Bishop; and therefore, if the lower clergy obey the Bishop first, the permission of the chapter becomes useless; and if they obey the chapter first, then the authority of the Bishop is normally violated. To the objection of the opponents, who claim that the chapter of Saint Mary was endowed with this privilege by the constitution of Clement XI, the advocate replied that, according to the cited constitution, this privilege was not only not confirmed, but rather abolished. For there, the Pontiff does not mention the privilege of the Marian chapter, except for the purpose of abolishing it; indeed, among the disputes which the Pontiff wishes to summon and completely extinguish, he mentions the opinion of Master Guicciardini, concerning the right of the first-mentioned collegiate church to privately arrange processions. And then, "lest every day a new opportunity arise for disputes and dissensions, which would seriously prejudice the divine service," he establishes a new state of affairs, so that the former disputes do not arise; and he decrees that the chapter of Saint Mary "should proceed separately and apart, and the aforementioned individual churches...under their respective, less elevated crosses, should proceed in processions and in all other matters." And this one provision was the most important positive disposition of the Clementine constitution, while all the others have an abrogative meaning. Therefore, it is inappropriate for the chapter of Saint Mary to appeal to this constitution, the advocate argued. And this is confirmed by the subsequent facts. For twenty years after the apostolic letters, the decree of Riez prohibited any procession from being held in the city of Barletta.

[*Latin ed. p. 121*]

TRANI. 121 The Ordinaries of Trani, both then and in the future, have established their authority, as happened on August 11, 1792; at that time, the Vicar of Trani ordered that "it be notified to all of the clergy, both secular and regular, of the city of Barletta, that they should not dare to carry out any public and extraordinary procession without first obtaining written permission from this episcopal curia." And this pertains to the first point of the matter, namely, regarding the granting of permissions. Regarding the

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right, which the actors claim for themselves, to prohibit any ordinary processions in Barletta from taking place without the permission, dependence, and intervention of the Chapter of Marano, the defender observes that this presumption implies the authority of the Ordinary: since the authority of the Bishop extends to all matters undertaken in the Diocese. Trident. Cap. 6, sess. 25, De ref., and it is defined therein that public supplications, with accompanying ceremonies, must be held. De Luca, De iurisd., disc. 100, no. 9. Therefore, when the Chapter of Marano contends that all matters should be carried out in private supplications without the Bishop, and that the church of St. James can do nothing without its permission and intervention, it is attributing a greater power to itself than it possesses. This is all the more reprehensible when it is done to gain profit. The advocate recalls that the Chapter of Marano does not grant permission for supplications unless the canon of 85 livres is paid. And, he continues, it cannot be maintained that such a privilege can be claimed for the church of St. Mary. For this "matricity" is not, in the first place, its own, but only an improper one; as is clearly demonstrated from the aforementioned Constitution of Clement XI, where the church of St. Mary is called "a distinguished collegiate church, and less properly, a mother church": and this is repeated in Trani, Juris sep. of January 13, 1673, Rondinino, decis. 7, par. 18, Recent. Furthermore, this improper "matricity" is a term of honor, which is usually granted to a larger church, and often to the cathedral itself; but no...

[*Latin ed. p. 122*]

122. TRANEN. This [boundary] line marks the division of jurisdiction or precedence; De Luca, *De Praeeminentia*, discourse 42, number 12, and subsequent references. The Rota also states this, in the aforementioned passage, number 9. Furthermore, it is known that formerly both churches jointly administered the care of souls; and it is only since the establishment of defined boundaries "between the parish churches of Saint Mary the Greater and Saint James" that this has been the case. Therefore, it appears that the condition of both churches was equal, and that there was no relative subordination. This is confirmed by the authority of Cardinal De Luca, who in the aforementioned discourse 43, *De Praeminencia*, states "that there is no evidence of the church of Saint Mary being the mother church, since the Rota, from the reasons presented in discourse 27, has established a formal separation of particular territories with all kinds of independence." It cannot be argued that the church of Saint James was, before its erection into a parish, an auxiliary to the mother church of Saint Mary. Indeed, in the Rotal judgment *Cor. Priolo*, decision 365, number 365, number 4 and following, it was established that, at least from the time that certain territories and a specific population were assigned to each, the church of Saint James possessed the same jurisdiction and freedom. This was also confirmed in another Rotal definition in the aforementioned

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Tranen, regarding burial rights, of January 13, 1672, *Cor. Rondinino*, number 6 and following: "It is not proven that the church of Saint Mary was, in any way, the mother church with respect to this church of Saint James; rather, the contrary is inferred from the aforementioned division of boundaries, in which both churches are considered... in which case, neither can be called the mother church, since each is equally a parish church." But if, for the claim of precedence, the title of "mother church" does not benefit the church of Saint Mary, neither does the title of "cathedral." For, first, the church of Saint Mary will not acquire this honor unless, according to the current Bishop of Tranen, as expressly stated in the apostolic letters of April 20, 1860, in which the church of Barula was to be made an episcopal see. But, even setting this aside, the learned jurist argues that the privilege of being a cathedral church does indeed...

[*Latin ed. p. 123*]

TRANEN. 123 The primacy of honor and the distinction it confers; but it does not extend to imposing the yoke of servitude upon other churches; De Luca, loc. cit., no. 40 and following. – There – "Even the cathedral church cannot compel the clergy of inferior churches, which are by right subject to it, to participate in such voluntary processions and other solemnities; therefore, much less can a mother church or a parish church; although other churches may be said to be subject to it in a territorial sense." Therefore, in order for servitude to follow from the dignity conferred by the cathedral, it would have to be expressly sanctioned in the grant itself, by a special privilege, which the Pontiff did not do. Or, if that is not the case, the Marian chapter must prove that it has not been in unlawful possession, and that it is not hindering the church of St. James without its consent, and without its dependence and intervention; which, likewise, cannot be demonstrated; since, according to Tranen, the forty years of performing processions, with the sole permission of the Bishop of Usküb, militates against the church of St. James. Regarding the other part, namely, the precedence of the parish of St. Mary over the chapter of St. James, it argues that this is anticanonical, as taught by Ursaya, vol. i, part. 1, disp. 6, no. 72: "The canons of a collegiate church have precedence in all functions, even over the parish priests." And this applies even if the parish priest belongs to a more distinguished church or a mother church; Ferraris, Voc. Praecedentia, no. 69, where he also cites several decisions of the Sacred Rites Congregation. It does not, it says, matter that the parish priest of St. Mary is also one of the canons of the cathedral church; for the same Sacred Rites Congregation, in Vicenza, July 47, 1640, decreed: "If the canons of the cathedral church attend funerals as individuals and without the cross of the chapter, they do not precede the parish priest." Nor does it matter that the spiritual care is held by the chapter of St. Mary, so that those who exercise it are called perpetual curates; for whenever the chapter has not been expressly called to a funeral, one of

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these.

[*Latin ed. p. 124*]

124 TRANI. The economic, by his own name and right, conducts the funeral, and not the chapter; *Rota in Ruben*, concerning the right of burial, April 27, 1734, before Rezzonico, number 1 and following. Nor does it matter that the care is deeply rooted in the chapter; because funerals pertain not to the general jurisdiction, but to a specific exercise; *Rot.*, cited above, Cardinal De Luca, *De praeeminen.*, discourse 21, number 2. With these considerations, the purpose was to resolve the doubt as to whether the sentence of the court of Trani should be confirmed or rejected in this case. RESOLUTION. After discussion by the Sacred Congregation on April 28, 1888, it was decided to respond: The common law is to be observed in the future; and, with perpetual silence, the matter is concluded with the Most Holy. FROM WHICH WE MAY GATHER: I. Since the Bishop has the primary authority over all matters to be done in the diocese, therefore, no one, except the Bishop, may publicly announce supplications, nor define their order, place, and reason. II. In this matter, neither the ancient custom is to be considered, nor is it contrary; for it cannot be subject to the private judgment of anyone what concerns the public good. III. The *matricitas*, from Cardinal De Luca, which is usually granted to the major church, and even to the cathedral, is a proper and only a term of honor, but it confers no sign of jurisdiction or preeminence. IV. The privilege of cathedral status indeed implies the primacy of honor, and the dignity of preeminence, but it is not valid for imposing a yoke of servitude upon other churches. V. Nor can the cathedral church compel the clergy of inferior churches, which are legally subject to it, to processions and other solemnities; and much less can a *matrix* or parish church do so, even though other churches may be said to be subject to it by reason of territory.

[*Latin ed. p. 125*]

TRANEN. 125 V I. It was declared by the Holy Congregation that it was necessary to return to the common law, so that all claims of privilege in Liège might be rejected, and that concord might once again flourish.

FIRMANA. MORTGAGE CAUTION. March 24, 1888. Through summary petitions. SUMMARY OF THE CASE. On August 20, 1887, action was taken regarding this matter (1). Count Caietanus, needing to contract a loan of six thousand livres due to the distress of his family affairs, could not do so unless he offered a mortgage as security. He requested that the goods of the collegiate church of St. Michael the Archangel in Fermo, which had been civilly suppressed, be subjected to this pledge. This collegiate church, however, had been redeemed from the hands of the state by the family of Count Caietanus, as its patron, in order to compensate for expenses, and held those goods in administration. The goods belonging

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to the former collegiate church amounted to a value of 100,000 livres; the patron was to be the parish population for two parts, and the family of the aforementioned Count Caietanus for one part; the right of this family was divided between two brothers, Caietanus the petitioner, and the priest Aloysius. Count Caietanus had previously requested a similar favor for a loan of 4,000 livres, and had obtained it; in this instance, however, the Ordinary was to recommend the matter, and the archpriest of the parish was not to oppose it, "provided that the portion belonging to the entire body of the parishioners does not suffer any detriment." Nevertheless, the Sacred Congregation responded on August 20, 1887: It is not expedient. But, having learned of the matter, Count Caietanus, with fervent prayers, appealed to the Most Holy [See], requesting that the absolutely necessary favor not be denied to him, so that he might be able to provide for the education of his son, and for the proper provision of his daughters, who are orphans.

(1) Confer Vol. XX, 378.

[*Latin ed. p. 126*]

126 The Count of FIRMANA attends to the necessities by which his family is now burdened, and to whatever his ancestors may have accomplished through the favor of the Church, so that, through his efforts, he might benignly receive assistance from the Apostolic See. When asked by the Archbishop about new petitions, he truthfully recounted them. It is certain that the petitioner, weighed down by grave and pressing family difficulties, was brought to a state of deep sorrow; and that there was no other means available to him to provide for his daughters and to support the education of his son, except to obtain the desired permission to contract a loan secured by his beneficial holdings. These conditions, which also involve a portion of his brother's inheritance and a promise to restore the sum, are such that they appear worthy of consideration. Furthermore, referring to what I have explained to the Most Reverend Fathers on the occasion of the petitioner's previous requests, I have no doubt that, moved by the poverty of the head of the family, the Archbishop concluded by saying that he would commend his wishes.

A Synopsis of the Matter: On the one hand, the protection of the sacred patrimony, which must be preserved intact according to canonical law and the well-being of the Church, opposes the petitions; on the other hand, the serious condition of the Count and his family must be seriously considered, and the poor and orphaned children might fall into a deplorable state if the petitions are rejected. Also to be considered is the Count's devotion to the mission and to religion, by which the danger of the dispersion of the sacred patrimony is lessened, and the hope of its restoration or liberation is fostered. Finally, there is another circumstance, which, at least until now, has not been fully brought to light; namely, that the family of the Count

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of Caietani endowed the Church generously, and defended it repeatedly. Moreover, if the law allows assistance to be granted to a patron in need, all the more so in the present case, in which the patron not only excels in religion, but is also indebted to the Church for special benefits.

[*Latin ed. p. 127*]

FIRMANA 127 Moreover, even if, under pressure, he does what civil law permits, but which his conscience forbids, a bad suggestion is a necessity. Having considered these things, the question arose: what should be the response to the prayers?

RESOLUTION. The Sacred Congregation, having considered the matter on March 24, 1888, decided to respond: "By virtue of [this], for the purpose of obtaining a loan and subjecting it to a mortgage guarantee, under the authority of the Archbishop, the property mentioned in the prayers, which was then granted by the petitioner and his brother Aloysius with the obligation to repay the loan in annual installments, determined by the Archbishop, and to provide each year to the same Archbishop an accounting of the annual repayment, shall be..."

TOLENTINO. Regarding the COMMUTATION OF THE WILL. On March 21, 1888. Through summary prayers.

COMPENDIUM OF THE MATTER. The former parish priest of the Collegiate Church of St. Francis in the city of Tolentino reported that two legacies had been left to the Collegiate Church; one of 1000 florins, and the other of 1600 florins, with the obligation to celebrate, on days of his choosing, in this Collegiate Church, as many Masses as the revenues of the two legacies can support, as a tribute to the diocesan charity. Regarding this matter, the petitioner requests that these revenues be applied to the maintenance of Masses for feast days, namely, the feasts of the Holy Rosary, and the conventual Mass; for the number, as we have said, according to what the revenues allow, along with a charity to be determined by the Bishop for the time being, according to the variety of the feasts. The Bishop commended the prayers and the zeal of the parish priest.

SYNOPTIC DISCUSSION. Furthermore, the point of difficulty, if there is one, lies in the fact that the testator ordered Masses to be celebrated according to the revenues, according to the ordinary tax of the Diocese, on days and hours...

[*Latin ed. p. 128*]

128. CONCERNING INDULGENCES. The parish priest, at his discretion, and the opposing party, should agree on a specific day and time for the celebration, from which the necessary increase in alms will be determined, and also the restriction on the number of applications. Thus, there are two aspects to consider regarding the moderation of wills, one more lenient, the other more stringent. It may be judged more leniently that the

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freedom of time and hour be specified. But it seems more serious, and it is not easily admitted, that a reduction in applications should remain, contrary to the explicit will of the founders. For we are concerned with matters of the greatest importance, namely, the salvation of souls. Furthermore, as it is written in Clementine Decretals, "Quia contingit," book 2, title 1, and in the Code of Canon Law, book 1, title 1, that the wills of the most powerful men are to be observed, and that they are to be fulfilled with even greater diligence in these matters. Nevertheless, when the authority of the Church, along with the needs of the present time, can greatly benefit souls, and when it is possible to assist those who might suffer loss from a reduction in Masses, while also providing for the needs of the people, it seemed prudent to the judges to determine whether there exists a necessity that would warrant the dispensation and application of this power; therefore, the Most Eminent and Reverend Fathers were asked to consider what the parish priest taught in his aforementioned letter, as well as what the Bishop added in his letters. Furthermore, it is known from the documents of the Sacred Congregation of Indulgences, such as the decree of Bologna, Reductionis missarum, May 29, 1824, and the decree of Ostia, Commutationis voluntatis et reductionis, November 20, 1824, and others, that, for just cause, the Sacred Congregation has frequently granted increases in alms and reductions in Masses. With these premises, the question was raised as to what response should be given in prayer. RESOLUTION. The Sacred Congregation, after deliberation, on March 24, 1828, decided to respond: "By virtue of [the relevant decree], for the sake of [the intended benefit], for a period of five years, if [certain conditions are met], etc."

[*Latin ed. p. 129*]

129 FROM THE HOLY CONGREGATION OF THE COUNCIL OF BELLUNO. OF CUSTOMS, April 28, 1888. Session 22, decree concerning observance and avoidance in the celebration of Mass. Session 24, Chapter 14, concerning reform. SUMMARY OF THE MATTER. The Bishop of Belluno addressed the Holy Congregation, stating that, at a time considered unforgettable, it was the custom in the Cathedral of Feltre, and in some other parochial churches of that Diocese, that the stipend given to the Lenten preacher was completed by determining a sum taken from the alms and offerings collected on the fourth Sunday of Lent for the suffrage of the dead. Furthermore, the expenses for acquiring the oil, which is blessed in the Lord's Supper, are borne for the Cathedral of Feltre by the Bishop's table, while for the Cathedral of Belluno, according to a very ancient custom, they are borne by two urban parish priests. However, according to the same very ancient custom, in both Dioceses, the parishes and rural curacies, upon receiving the blessed oil, pay a single sum: which sum in the Diocese of Feltre is given to the custodian of the Cathedral, who distributes the oil; while in the Diocese of Belluno, it is given to the aforementioned urban

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parish priests, who, after paying the expenses incurred in procuring the oil, and after giving compensation to the Cathedral custodian, who likewise distributes the oil, retain what remains. Having explained these matters, the Bishop implored that, as far as necessary, the Holy Congregation would declare that both customs could be maintained. Upon receiving such requests, a response was given that the Bishop should act with the Most Reverend Patriarch of Venice. Acts, Volume XXI, page COXLIII, 9.

[*Latin ed. p. 130*]

130 BELLUNO. The Bishop immediately took action, but without effect; for the Patriarch replied that the custom regarding the manner of paying the preacher's stipend could not be tolerated, unless it was established that the offerers had given their consent; and concerning the offerings made when blessed oils are distributed, it could be retained with respect to the custodians, since they perform some labor for this, but certainly not with respect to the two parish priests, since they perform no labor, and regarding the expenses they incur in purchasing the oils, it should be presumed that something had previously been added to their benefices as compensation. Having received this response from the Patriarch, the Ordinary of Belluno again appealed to the Sacred Congregation, reiterating what he had previously explained in the first petition, and at the same time declaring that, concerning the first question, the preacher is obligated to celebrate two Masses for every three Masses offered in his favor; and that, concerning the second question, nothing had ever been added to the benefices of the parish priests of Belluno to cover the burden they bear in purchasing and distributing the blessed oil. With these points presented, the Bishop again petitioned the Sacred Congregation to ratify such customs, or at the very least to grant a remission concerning the past.

Synopsis of the Arguments. WHAT IS OPPOSED TO THE PETITIONS.

First of all, it was noted that, in general, offerings are intended for those to whom they are destined, by the intention of the faithful who offer them. *Clementina*. "Because it happens that..." 2 *De relig. domib.* The reason is that, since offerings are generally voluntary and free, they should undoubtedly be applied according to the intention of the giver; for anyone who freely gives and offers is the master and arbiter of his own property. I. in re mandata C. Mandati; Reiffenst. De decimis, no. 191. This principle applies even more strongly when it comes to alms for Masses, since those things which are more sacred should be treated with greater reverence. Hence, in the decree of Urban VIII, dated June 21, 1625...

[*Latin ed. p. 131*]

BELLUNEN. In the decree of 131, it is read that "when, for the celebration of several Masses, stipends of any amount, however inappropriate or meager, have been given, or are given... the Holy Congregation, under

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oath of divine judgment, commands and orders that absolutely as many Masses be celebrated as are proportionate to the aforementioned alms, so that otherwise those to whom it pertains will not fulfill their obligation, but rather will gravely sin and be held to restitution." It makes no difference that those offering alms for Masses have not specified the number, because in that case, the standard must be taken from the custom of the province or from the synodal statutes, as the S.C. declared on December 23, 1697, in response to the second of seventeen doubts proposed to it concerning the aforementioned decree. In only one case can a portion be deducted from the alms, namely, when the revenues of the church have diminished to such an extent that they are unable to bear the expenses involved in the celebration of Masses. But even in this case, "it must be ensured that absolutely as many Masses are celebrated as have been prescribed by those offering the alms." BEERET. It is celebrated, Masses, in response to the seventh. But can a custom, even if very ancient, be invoked against this kind of provision? Because, as Gregory IX says in the final chapter of *De consuetudinibus*: "Although the authority of a long-standing custom is not insignificant, it is not so powerful that it must necessarily prejudice positive law, unless there is a reasonable reason." Indeed, the custom of satisfying greater alms through an inadequate celebration of Masses is to be considered unreasonable, because it is contrary to natural law, it is disapproved of by positive law, and it is accompanied by very bad consequences. It cannot be said that the value of the sacrifice is infinite, because although it is uncertain whether one Mass is equally efficacious if offered for one person as if offered for a thousand, it is certainly true that one Mass does not equally benefit (in terms of the efficacy of the sacrifice) as a thousand. For although the sacrifice of the altar is infinite in itself, since, in substance, it is the same,

[*Latin ed. p. 132*]

132. BELLUNEN. Quod est sacrificium Missae et sacrificium Crucis, tamen, secundum voluntatem Dei, est finitum quod ad effectum pertinet. Alioquin, Ecclesia erraret, si curaret plura sacrificia offerre pro specialibus necessitatibus hominum. Hinc, Alexander VII, propositum sequentem, ut minimum, tanquam scandalosum, damnavit: "Non est contra iustitiam, pro pluribus sacrificiis, stipendium accipere et unum sacrificium offerre." Quoad alteram vero consuetudinem, consideratum est quod, etsi oleum, ut est materia sacramenti, sit aliquid mere temporale et pretio aestimabile, et ideo nihil repugnet, ut, ita consideratum, vendetur; illud tamen, Ecclesia omnino prohibuit, ut patet ex C. De iis quae 16 de Simonia; Pirhing ibi, p. IV; Schmalzg. ib. n. 164; Silvester. De Simonia; Richard, Analysis Concil., ib.; Ferraris ib. art. 1, n. 6, etc., et ob reverentiam sacramenti servandam, Ecclesia talem venditionem aut emptionem posuit in vitio simoniae iuris positivi humani; ita ut qui cumque hanc attentaverit, non

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solum reatum inobedientiae incurreret, sed etiam illud simoniae iuris. Soto, De Iust. et Iure, I. 9, q. V, a. 11, Pirhing, De Simonia, n. 6. Et hoc, licet tali prohibitione, praedicta materia spiritualis non efficiatur; quia Ecclesia potest actum quempiam indifferentem, ita in certo vitio ponere, ut qui illum exerceat, in tale vitium revera incidat. Hinc damnandam esse contrariam consuetudinem, quae Feltriae et Belluno invaluit: primo, quia, id quod gratuito a Deo collatum est, non quidem in peculiare commodum illius, cui confertur, sed in bonum publicum totius Ecclesiae, nemo potest iuste venundare, quia non est suum, sed illorum quibus vendit; talia autem sunt dona Dei. Ac propter hoc, Christus admonuit esse Apostolos, Matth. X, ubi ait: "Oratis, gratis date." Soto, De Simonia, I. 9, q. V, a. 11. Unde, aliquid accipere pro oleis benedictis, continet duplicem malitiam, scilicet, distributor oleorum se gerit velut dominum rei, quae sua non est, et parochi debent aliquid solvere pro habenda re, quae iam ad eos pertinet.

[*Latin ed. p. 133*]

BELLUNEN. 133 Furthermore, if the quantity of oil allotted to each parish priest is so small that it is scarcely of any value, the money received appears, according to Pirhing, *De Synodo*, no. 35, to be taken on account of the consecration, rather than for the oil itself, which is entirely to be avoided. Moreover, since the dignity of the sacrament is the reason why it is forbidden to accept anything, even under the pretext of material goods, it follows that a custom which violates this prohibition, in itself violates the dignity of the sacrament. Finally, with regard to absolution for past actions, it has been observed that since both customs have caused injustice from time immemorial, a very grave obligation of restitution arises from this. Absolution should not be granted unless some impossibility prevents it. However, in the case where total restitution is not possible, at least some partial restitution is appropriate, especially with regard to offerings for the dead.

WHAT APPEARS TO FAVOR THESE PRACTICES. On the other hand, it has been noted that the first custom is favored because, being of long standing, it gains the force of an Apostolic privilege, and therefore not only can a certain portion of alms for the dead be converted into a stipend for the preacher, but even all the alms. For, as Fagnanus states in *Conquestus de Foro*, "things given by laymen to the Church, when burdened with the obligation of celebrating Masses, cease to be lay and pass into the dominion and power of the Church; the Supreme Pontiff has supreme, general, and free power over things destined for ecclesiastical ends." Schmalzgr., *De Decimis*, no. 96, states that the Holy See is the principal dispenser in this matter, *Summa Theologica*, I-II, q. 100, a. 1 to 7. Furthermore, it is advisable to maintain this custom because of the benefit it brings. For many parishes are enriched by the benefit of Lenten preaching, which, although useful at all times, is especially valuable during those days, because it in-

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volves the most sublime sacrament of divine mercy. If a custom of this kind were to be eliminated, especially given the poverty of the churches, it would no longer be possible to provide for this.

[*Latin ed. p. 134*]

134 BELLUNEN. A certain honorable stipend, by which a preacher may be supported: and thus, not only that remedy, which has been healthily instituted for the faithful, to draw them to the contemplation of heavenly things, is corrupted by the vanity of the world, but also that means, by which prayers for the dead are offered. And thus, for the sake of obtaining a greater good, the very good itself vanishes. Nor does it seem to be of much consequence to seek unanimous agreement on the part of those offering. For it can reasonably be supposed that such agreement is not lacking, both because, as has been said, a greater good is obtained through the partial conversion of alms, and especially because this greater good is ordered to the spiritual benefit of those offering, without excluding the benefit of the souls being purified. Indeed, such agreement is not necessary for this custom to be considered legitimate; provided that, after the offerings have been given, the alms pass into the power of the Church, which can dispose of them as it sees fit, according to what it judges to be most expedient in the Lord. But, even if the necessity of such agreement were admitted, if it were not the case, the custom would not be to be rejected; this difficulty can be overcome by the posting of a notice, informing the faithful of the manner in which their offerings are used, as ordered by the Sacred Congregation in a Decree concerning alms for Masses, January 27, 1877. Furthermore, it has been noted in favor of the second custom that, if all rights forbid demanding anything for the administration of spiritual things, nevertheless, there is nothing to prevent the acceptance of what is offered entirely spontaneously. Indeed, the Council of Trent (C. Ad Apostolicam 42 De Simonia) commands that these "pious customs" be observed, and decrees that ecclesiastical sacraments be freely conferred, and that the local Bishop, having knowledge of the truth, should restrain those who endeavor to change this praiseworthy custom." Moreover, since the custom, according to which a small offering is presented to each parish in this case, carries with it no appearance of extortion, but rather a sign of commendable generosity; it is clear that it should be observed. Especially since, even if...

[*Latin ed. p. 135*]

BELLUNEN. Est opinatum quod duo parrochi urbani et custodes, ex beneficiis aut stipendiis eis assignatis, habeant quod honeste vivere possint; sed hoc non est certum. Postquam autem consideratum est quod hujusmodi oblationes, sicut stipendium sustentationis, sunt consideratae, non solum possunt accipi, sed etiam exigere. Quilibet enim (Reiff. De Sim. n. 188) potest contendere quod ei aliter iure naturae debetur. Atque tamen,

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quod temporale, per modum stipendii pro spirituali, iure naturae iam debetur ministranti spiritualia, ita ut omnes confitentur. Adde quod accipere aliquid pro ipsa re sacra, nullo modo potest, quia id est divino iure prohibitum. At accipere aliud pro eo, quod res sacra non est, sed ad ipsam solum ordinatum, aut cum ea aliquo modo conjunctum, sola lege ecclesiastica vetitum est. Atque, exceptis excipiendis, tritum est in jure, legem quandam ecclesiasticam consuetudine aboliri posse. Hocque confirmatur ab Annecien diei 20 Dec. 1879, ubi S. C. O. respondit tolerari posse consuetudinem, juxta quam unius libellae canon a quolibet parocho, pro oleis sacris, exigebatur (1). Tandem, supposito quidem quod allatae rationes non sufficiant ad effectum sustinendae utriusque consuetudinis, ad hoc saltem valere patet, ut concedatur absolutio pro praeterito. Nemini siquidem dubium est, iniustitiam in certo commissam, parere non posse obligationem restituendi certam. Hinc vulgatissima illa prodisse adagia: Lex dubia non obligat: In dubiis melior est conditio possidentis. Porro, ex usque dum disputatur, hoc procul dubio deduci, certum scilicet non consistit, utrum per utramque consuetudinem verae iniustitiae commissae fuerint. Quibus ex utraque parte animadversis, proposita sunt enodanda sequentia:

Dubium I. An sustineri possit sacri concionatoris, partem defunctorum collectarum in (1) Confer Vol. XIII, 180. consuetudo assignandi, favore eleemosynarum in suffragium casu.

[*Latin ed. p. 136*]

136 BELLUNEN. II. In quibus casibus consuetudo exigendi unius libellae oblationem, pro sacris oleis tribuendis, potest sustineri? Et quatenus negativae sunt ad utrumque vel ad alterutrum? III. An et quando concedenda sit absolutio pro praeterito in tali casu?

RESOLUTIO. Sacra Congregatio, post deliberationem sub die 28 Aprilis 1888, respondit: Ad 2, tolerari posse. Ad 3, provisum.

EX QUIBUS COLLIGITUR:

I. Oblationes fidelium, generalmente loquendo, in eos usus convertendos esse, ad quos offerentium intentione destinatae sunt, cum quivis libere donans et offerens rerum suarum moderator et arbiter sit.

II. Et hoc valere praesertim, ubi agatur de eleemosynis Missarum, circa quas Decretum Urbani VIII, die 21 Iunii 1625, editum, praescribit, ut absolute tot celebrentur, quot, ad rationem attributae eleemosynae, praescriptae fuerint.

III. Ideoque eos, qui aliter agunt, obligationi suae non satisfacere, quinimo graviter peccare et ad restitutionem teneri.

IV. Nihilominus, in vim immemorabilis consuetudinis, quae privilegii Apostolici efficaciam inducit, huiusmodi oblationes posse in alios usus pios erogari, ex eo quod res quae a laicis donantur Ecclesiae, adiecto onere cel-

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ebrationis missarum, desinunt esse laicales et transeunt in dominium et potestatem Ecclesiae, quae habet supremam, generalem et liberam rerum, ad finem ecclesiasticum destinatarum, dispensationem.

V. Sacrificium altaris esse quidem infinitum ex se, quia, quoad substantiam, idem est ac sacrificium Coenae et Crucis; illud tamen esse, Deo sic volente, finitum quoad effectum.

VI. A iure vetitum esse, pro spiritualium administratione, aliquid exigere, sed nullibi prohibitum esse, quominus accipiatur, quod omnino sponte ac libere offertur. Imo hanc secundam consuetudinem a iure laudabilem appellari, et expressis verbis praecipi, ut observetur et manuteneatur.

[*Latin ed. p. 137*]

BELLUNEN. July 437. To receive something for the sacred thing itself is forbidden by divine law, and cannot in any way be rendered invalid. However, to receive something for that which is ordered to the sacred thing, or which is in some way connected with it, such as, for example, the material removed from some sacrament, or accidental labor for the administration thereof, is forbidden only by ecclesiastical law, which can be abolished by legitimate custom.

PAMPILONEN. OF PAROCHIAL RIGHTS. On April 28, 1888. Session 24, Chapter 13, concerning Appeals. SUMMARY OF THE CASE. This cause arose between the Chapter of the Cathedral Church of Pampilonen and the Parish Priest, and was first proposed on January 23, 1886, under four doubts, and was decided in favor of the Parish Priest. Considering itself aggrieved by this resolution, the Chapter requested a new hearing, and obtained the opportunity to have the cause examined only with regard to the right of administering the revenues of the parish. Therefore, the cause being proposed again on January 29, 1887, it was dismissed with the following response: In Desio, but the Parish Priest remains obligated to contribute to the expenses of the sacristy and the fabric of the same chapel, and moreover. (1) But the Chapter did not agree with this resolution; hence, it requested a second time the benefit of a new hearing, which was granted to it with the following rescript: It shall be proposed again, with a thorough investigation by the new Bishop. The Bishop, acting according to the established procedure, after hearing the arguments, expressed his opinion with the following words: "In my judgment, disputes concerning the administration between the Chapter and the Parish Priest will have no end (although I say nothing about other matters) unless the parish is erected outside the walls of the cathedral church, leaving the baptismal font in this place." (1) Cf. Vol. XIX, page 468.

[*Latin ed. p. 138*]

138 PAMPÌLONEN. The parish is obligated to provide a small contri-

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bution to the cathedral. I work towards this suitable repair, considering it a truly peaceful solution. Then, without any difficulty on the part of the chapter, the parish revenues would be ceded. Meanwhile, if it pleases the Holy Congregation, everything could remain provisionally in the current state, or the esteemed administration of the parish church of St. John the Baptist could be entrusted to the Bishop's prudence. A concise discussion: PARISH RIGHTS. The pastor requests the implementation of the sentence issued by the Sacred Congregation of Councils on January 20, 1887, as it is entirely in accordance with common law. Since the chapel of St. John the Baptist appears to fulfill all the requirements for a true parish, as stated by Engel, book 3, title 29, number 6: namely, the power of the court of penance, a defined location and population, the exercise of care in its own name and in a singular manner, and furthermore, a distinction from the cathedral church, according to the teaching of De Luca, De D arodi, discussion 40, number 9. Therefore, the pastor must be independent in the administration of all the parish revenues, as can be deduced from C. De his quae fiunt a Prael. 9, with Barbosa De offic, and potest, page 3, chapter 21, number 5 and 24, and Ioan. Car. Antonelli, book 2, part 6, chapter 9, number 7. This is also evident from the commonly accepted doctrine, which holds that a beneficiary has dominion and, therefore, the administration of the fruits of his benefice. Engel, in Man. parodi, paragraph 4, chapter 4, number 6; Antonelli, loc. cit., number 6 in fine. This must be understood even more strongly in this case, because it is prescribed by the very capitular constitutions: that no right pertains to the chapter in the parochial acts, and that the care of souls must be exercised exclusively by the pastor, according to the norms of common law. The fact that common law is still in force in the church of Pampilonen is deduced from the agreement initiated by the Spanish government between itself and the Holy See in the year 1851, in whose article 25...

[*Latin ed. p. 139*]

PAMPLONA. Paragraph 139 states: "No chapter or ecclesiastical college shall be able to have attached to it the care of souls, and therefore, benefices that were previously subject to a particular college shall henceforth be subject to common law in every way." In accordance with this convention, the provincial decree of the year 1854 is cited, in which, on page 25, the Bishops are warned: "If anything should be done contrary to common law and the articles of the concordat, especially with regard to the ordination of parishes, taking into account the particular circumstances of a certain place, this should be expressed by the Ordinary in the general plan for the administration of the parishes." Furthermore, it is noted that another regional decree and the Apostolic Bull *Ineffabili* of March 29, 1859, substantially changed the status of the chapter, by the extinction of the regular chapter (which until then had existed in that church) with its laws, constitutions,

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and other things existing there, which are also worthy of special mention, and the erection of a new secular chapter in accordance with common law and the concordat. It is also noted that the Bishop of Vriz and Labayru, in erecting the new chapter, decreed that the parish should be organized according to what would be determined in the parish regulation (regolamento). In this regulation, which was perfected by his successor, with all numbers complete, presented for administration, and approved from the year 1880, it is prescribed that in each parish there will be only one council for the fabric, whose duties and attributions, according to article 22 of the decree of January 3, 1854, shall be: to collect and administer funds assigned to the cult, and other funds and emoluments that belong to the parish and its fabric by any title. Since nowhere is there an exception to the prejudice of the parish of St. John, it is evident, it says, that the same must be granted a right independent of the chapter, according to the aforementioned article, and also according to the practice that prevails in several other churches in Spain in similar circumstances. Moreover, the chapter should not be able to interfere with the established custom.

[*Latin ed. p. 140*]

140. PAMPILONEN. The canons argued with vehemence, claiming that, since the matter was being considered in the ecclesiastical court, an old canon, for which a long-standing custom had existed, had been extinguished, and another, recently established, had taken its place. Furthermore, they asserted that no argument could be derived from the constitutions themselves, because it had been demonstrated that the canons cited were of a transient nature.

CANONICAL RIGHTS. On the other hand, the canons' advocate maintained that the current parish priest could not oppose the canonical statutes, which determined the right to collect, administer, and distribute offerings, revenues, and alms given to the parish for the benefit of the cathedral, because: 1° a solemn agreement existed between the canons and the predecessor of the parish priest; 2° an ancient prescription stood in the way; 3° the arguments presented by the other side were of no value.

Regarding the first point, it was observed that after the publication of the canonical statutes and the rules for the organization of parishes established by the Bishop, the parish priest submitted to them, and performed all his duties in accordance with the provisions of this law. Nor did his successor act differently, but rather entered into an agreement with the canons, concerning certain minor matters, which was then approved and confirmed by the Bishop.

Furthermore, it is doubtful that the parish priest and his successors could oppose the canonical statutes in virtue of the aforementioned agreement. Indeed, the parish priest cannot oppose, because a well-known principle stands in the way: that which has once pleased cannot

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subsequently displease (arg. leg. 5 Cod. De obligat. et action.). Nor can his successors, because, as Reifenst. states in Cap. 2 de reg. iuris, § 6, § 14, and more clearly in § 46, no. 5, a successor in a benefice is considered a successor to his predecessors. And this is all the more true because the agreement was strengthened by the Bishop's approval. Indeed, the Apostolic approval is not required in such cases; Apostolic approval is required only in matters concerning the alienation of ecclesiastical property, but not in agreements of this kind.

[*Latin ed. p. 141*]

PAMPHILEN. 41. That such a convention was established forever and in the name of the Church, can be deduced from the fact that it forms part of the chapter's constitutions. Moreover, even setting this aside, the present parish priest is bound by the aforementioned convention, because he has acknowledged it and confirmed it by his actions, according to what is stated in L. 25 ff. concerning adoption and emancipation. It cannot be argued that the Bishop approved the aforementioned convention with this reservation, namely: without prejudice to the future parish ordination and its prescriptions. For it is said that this reservation pertains not to the convention itself, but to the taxation of burials; and first, from the very fact that, scarcely had the parish ordination been promulgated, the taxation of burials immediately ceased, and what was established in the parish ordination remained in force. The convention, on the contrary, remained in full force, which indicates that it was not subject to any reservation. Furthermore, the perpetuity of the convention is also demonstrated by article 7 of the convention itself, according to which the chapter obligated itself to pay the outstanding debt of the parish house, which was burdened by a tax, by making interim payments. This, of course, the chapter would not have done if the convention entered into with the predecessor of the present parish priest had not bound the parties forever. Moreover, besides the fact that the convention was established between the predecessor of the present parish priest and the chapter, the aforementioned right also belongs to the chapter by virtue of custom. This custom, it is said, has the force of law, and even provides a better title to the world, according to the authors. In order to demonstrate that the matter at hand concerns an immemorial custom, efforts are made to bring forth witnesses who, under oath, testify that they "have seen and heard their predecessors... the chapter exercising the collection, administration, and disbursement of revenues and offerings that came to the church and the parish." Furthermore, the authority of a public notary is cited, who, besides the instrument drawn up in the year 1460, in which the administration and collection are discussed,

[*Latin ed. p. 142*]

142. The PAMPHILIAN documents, specifically the chapter records of

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the Cathedral church, which detail all revenues and proceeds that were paid to the parish of Saint John, also contain certain books from the year 1724 up to the present day. These books record the revenues and expenses of the Cathedral, and consistently, the revenues and expenses of the aforementioned parish are also included, as they were collected and administered by the chapter and through its payments. This custom has not been abandoned since the beginning of the Concordat; for the Concordat intended only to establish a new delineation of parishes, and it did so not absolutely, but after hearing all those who have rights pertaining to the sacred Canons, that is, the Cathedral chapters, the respective parish priests, and the fiscal officials of the ecclesiastical courts. It should not be understood that the Patron intended the Concordat to undermine the independence of the parishes from the chapters and colleges, but rather that the independence of the parishes prescribed by the Concordat pertains only to the exercise of spiritual care for souls, and not to the temporal administration of the revenues and proceeds of the parish. It should not be said that this memorable custom was derogated from by the consent given by the Pontiff to the Concordat. Indeed, as stated in Chapter i, De Const., the Pontiff is not considered to abrogate or derogate from a memorable custom unless he specifically mentions it. Therefore, since in this case not even a word was made by the Pontiff regarding this memorable custom, it must be concluded that the custom is not considered to have been abrogated. Furthermore, it is observed that, by a regional diploma of the year 1854, the Bishops were granted full freedom to decide whatever they judge to be expedient for the good of the Church, so that one might conclude that the Concordat did not intend to absolutely impose the aforementioned memorable prescription. The same must be said regarding the other royal decrees of the years 1854 and 1865, provided that, besides the fact that they were issued, they were not enacted in the manner of a law, but merely as advice.

[*Latin ed. p. 143*]

PAMPILONEN. 143 Iii, as is evident from the text itself, and furthermore, as is clear from chapter 25, it is established that this same freedom was left to the Bishops. And this conclusion is further strengthened by what is read in the Acts of the year 1867. Moreover, it can be argued that the parish of St. John, with regard to its temporal affairs and the administration of its revenues, ought to be subject to the parish priest, because no exception concerning this matter was made in the parish ordinance: since it is observed that the ordinance, perfected by the successor of Bishop Vriz, is a general law binding the entire Diocese. On the other hand, the capitular constitutions promulgated before the public ordinance are a special law binding only the Cathedral. Furthermore, it is a well-known principle of law that a later general law does not abolish a prior law that speaks specifically on

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the matter, as Reitfenst. De Const. n. 496; Suarez De legibus lib. 6 cap. 5 state. Moreover, he observes that, since these capitular constitutions were presented many years ago to the government and to the Apostolic Nuncio, and no reforms were found in them, as should have been the case according to the royal diploma of 1852, it must be inferred that they were approved; and therefore, the exception concerning the administration of the revenues of the parish of St. John, which is contained in them, is of the same value as if it had been included in the parish ordinance. Finally, with regard to the second objection, namely the alteration of the status brought about by the suppression of the regular chapter in 1859, he observes that the church has not lost anything from this suppression, although its status has changed. The rights and privileges of a church do not depend on the qualities of the person, which, when changed, are lost, as is stated in S. Rota decis. 547 n. 5 cor. Merlino, and decis. 338 part. 5 recent. S. C. C. in Ravennaten. Funerum 17 Martii 1781, in Tiburtina 17 Martii 1827, and in Pergulana 29 Ianuarii 1825. After these observations, he concludes, in agreement with the author of the lectures on canon law given in the seminary of St. Sulpice, volume 2.

[*Latin ed. p. 144*]

144 PAMPILONEN. part. S n. 649 circa finem, observes that it is abnormal for two structures to exist within a single Church. "If a parish is united to a cathedral church, therefore two structures are not formed; rather, there is one, which administers the revenues and affairs of both the cathedral and the parish, that is, the Cathedral structure." Having considered these matters, the purpose was to resolve the doubt concerning whether one should adhere to or depart from the decisions in the case of RESOLUTIO. The Sacred Congregation of Councils, after careful consideration, decided to respond on April 28th. In the decisions and further. REGARDING THE RESIDENCE AND CANONICAL OBLIGATIONS of MONTISALTI, March 24, 1888. Sess. 22 cap. 3 De reform. SUMMARY OF THE FACTS. Tullius Galli, a canon of the collegiate church of Rotella, in the Diocese of Montisalti, presented a case to the Sacred Congregation. He stated that since 1876, he had departed from his place of residence, having previously resided in Montisalti, and then in the town of Force within the same Diocese, where he currently plays the organ and also assists the parish priest in hearing confessions. He has always fulfilled the obligations of the Masses that were attached to his canonry, with the exception of the conventual Masses on weekdays, which he has not celebrated since the aforementioned year. He alleged that the reason for this irregular conduct was that the chapter of Rotella had been suppressed by civil authorities and is now almost extinct. Nevertheless, feeling completely secure in his conscience, for the peace of his soul, he requested that he be absolved from the obligation of the conventual Masses that he had not celebrated, that any defects in the collection of canonical revenues be remedied, and that he be freed from the obligation

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of residence in the future.

[*Latin ed. p. 145*]

MONTISALTI 145. Ad hanc orationem, Episcopus coadiutor interrogatus, et cum ei mandatum daretur ut locum in capitulo Rotellae audiret, respondit: "Mox et transmissa ad hanc Curiam instantia, qua sacerdos Tullius Galli, canonicus ecclesiae collegiatae Rotellae, postulabat, ut posset restituere reditus canonicatus ab anno 1876 improprie perceptos, ob non impletam legem residentiae, et ut in posterum extra locum beneficii commorari posset, illam statim patefeci tum Priori capituli, tum alteri canonico superstiti. Hi in unum congregati, oratorem monebant, ut oneri residentiae satisfacere deberet: 1° quia, absente, officium in choro recitari non potest; 2° quia si olim reditus beneficii satis erant eius sustentationi, multo magis nunc sufficient debent ob obtentam reductionem missarum, quae onus peculiare eius beneficii constituunt, ad 12 tantum singulis annis applicandas; 3° quia populus eius loci de ipsius absentia queritur; 4° tandem quia prior-parochus alio sacerdote eget, qui eum adiuvet in confessionibus excipiendis, praesertim cum vita excesserint quatuor canonici coadiutores."

"Contra," ait orator, "se non posse propriae sustentationi prospicere reditibus praehendae canonicalis, qui exigui valde sunt."

"Et reapse si prae oculis habeatur, annui reditus non excedunt libris circiter 260, et ab his detrahatur onus missarum conventualium, circiter 37, et aliae duodecim, quas celebrare debet ratione alterius oneris, canonicatu adnexi; et insuper si advertatur ipsum in diebus suis iam processisse, esse scilicet quasi septuagenarium, adeoque non posse Rotellae residere quin famulum sibi adiungat; facile negotio perspicitur, reditus eiusmodi vel necessariis expensis impares esse. Econtra, pulsando organa in ecclesia collegiata Forti, annue habet libris circiter 290, et alias triginta pro quolibet mense recipit uti confessarius; quas tamen paucis aliis mensibus ipsum percepturum puto, nam brevi novus renunciabitur parochus, qui eius ministerio in excipiendis confessionibus non indigebit."

Atta, Tom. XX, fasc. CCXLIII, 10.

[*Latin ed. p. 146*]

"To this, although Rotella resided there, it would not be easy to fulfill the duties of the choir, both because the previous parish priest, by reason of his office, could often not attend the choir, and because one of the canons, for other reasons, might be excused from performing this duty.

"Regarding the fulfillment of the obligations of the Masses, the priest from whom Rotella was received celebrated twelve Masses each year to fulfill the special obligation attached to the canonry, but he celebrated or had celebrated only on Sundays of each week the conventual Masses assigned to him, omitting all the others; for he considered that, since the chapter had been reduced to only three canons, it had been dissolved from that time,

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and therefore the obligation of the conventual Masses also ceased, along with the obligation of residence.

"As for me, I would humbly suggest to the priest that, considering his advanced age, and also the scarcity of income from the canonry and other sources, he might be granted permission to retain all the income he had illegitimately received; and that, with regard to the neglected conventual Masses, a small, unspecified number of Masses might be assigned to him to be celebrated, for a single time. Regarding the law of residence, I fully submit to the wise judgment of this sacred Congregation. I only observe that, considering the small number of priests in each parish of the diocese, it would be difficult, if not impossible, for the priest to find another priest to replace him in the choral duties, even only on feast days, especially since, besides the two aforementioned canons, there is no other priest in Rotella.

Synoptic Discussion. WHAT SEEMS TO BE OPPOSED TO THE PETITION. Indeed, it is certain and well-established doctrine, as the Council of Trent decreed in chapter 3 of Session 22, chapter 12 of Session 24, and elsewhere, and as the Sacred Congregation diligently protects, that a canon must regularly fulfill the duties of the choir and the obligations attached to the benefice."

[*Latin ed. p. 147*]

MONTISALTI 147. Nor does the suppression of revenues excuse [exemption from service]. For, "the diminution of revenues" does indeed lessen the burden of service, as the Sacred Congregation of Councils has judged in certain cases; but it does not, by any means, abolish it, as was the case in Bituntin on September 15, 1770, concerning the service of the choir of Eugubina on January 23, 1795, and of Conversana on December 20, 1834, where it was permitted that the third order, or the service, be performed by turns every third week; or as in Eucerin on December 22, 1838, and in Cathacen on September 5, 1699, concerning the service of the choir of Recanaten on July 8, 1796, §, where an alternative form of service was permitted. Much less, therefore, does the suppression of the civil chapter excuse [exemption from service]; for, besides the fact that the canons of a suppressed collegiate church, who receive a pension, are not exempt from choral obligations before the civil magistrate, – indeed, it was expressly stipulated in article 3 of the decree of August 15, 1867, that invested orders receive an annual income, provided they fulfill the annexed obligations; – moreover, in canonical jurisprudence, this most just rule is maintained, that the suppression of a civil chapter is nothing other than a true spoliation of the Church, and is in no way considered as the extinction of the title or collegiate church. Therefore, in this respect, any suppression is null and void; and therefore, when such a suppression is invoked, it is useless, and indeed unjustly, to attempt to use it as a pretext for exemption from service. Nor does the objection based on the

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lack of members seem well-founded. For, besides Tullius Galli, there are two other canons present in that church today, and probably there were more, or at least several, a few years ago; but, if it pleases, let us retain three, and let us say that no more than three remained in that chapter after the suppression. But this is of no consequence. For, as is established by the common doctrine of 1 Neratius, *De verb. signif.*, chapter 1, *De elect.*, confirmed by Rota, Cor. Crispo, decision 277, and elsewhere, three canons are required and sufficient for the erection and establishment of a collegiate church; because with three, a society is formed, and the service of the choir is fulfilled. Therefore, this exception seems false, and therefore, it is completely devoid of effect.

WHAT SEEMS TO FAVOR THE PETITION. Nevertheless, from another...

[*Latin ed. p. 148*]

148. The Most Reverend Congregation will not disdain to consider what the Ordinary writes. For, although the speaker may have presented a poorly reasoned argument, and although ignorance of the law should not be admitted; nevertheless, this ignorance and this flawed mode of reasoning may enter the mind of someone, and may, if not fully excused, nevertheless offer a reason for compassion and leniency. Furthermore, it is added that the speaker is an old man, and poor; and therefore, he cannot be free from remorse for past omissions and for the undue receipt of fruits, except to the greatest extent, namely, by condemning him to celebrate a certain number of Masses, according to the Bishop's judgment. To compel him to return, because of his age and poverty, presents certain difficulties, as the Bishop rightly indicated. The Sacred Congregation, in its judgment, has not neglected to consider how justice can be reconciled with the exigencies of age and condition; and how, with these considerations in mind, the law can effectively regulate those who are obligated to fulfill their duties. With these things noted, the purpose is to explain the question of whether and how the canonical duties of Tullius Gallus can be admitted in this case.

RESOLUTION. The Sacred Congregation, having considered the matter, on March 24, 1888, decided to respond: After the celebration of a certain number of Masses, determined by the prudent judgment of the Bishop, for the sake of absolution and remission with regard to the past; and with regard to the future, for the sake of dispensation from residence and from the duties of the choir for a period of five years.

FROM WHICH WE MAY CONCLUDE: I. That a canon is bound to attend the choir and to fulfill other canonical duties, notwithstanding his poverty; and that this poverty can only be a cause for the diminution, but

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not the removal, of the service of the choir, by pontifical indult.

[*Latin ed. p. 149*]

MONTISALTI, 149, I, I. The civil suppression of ecclesiastical entities does not excuse canons from fulfilling their proper obligations; for, according to canonical jurisprudence, civil suppression is considered a true spoliation of the Church, and by no means the extinction of a titular church or collegiate body.

I, I, I. The poverty of the orator, and his advanced age, have provided grounds for granting a benevolent remission and absolution, as well as a temporary dispensation from residence. APAMIENSIS and VICTORIENSIS. MISSES FOR THE PEOPLE. On April 28, 1887. Session 23, chapter 1, concerning reforms. SUMMARY OF THE CASE. The Ordinary of Apamiens humbly requested a solution to the following doubt: "In the rubric of the Breviary, it is written: 'If the feast of the Most Holy Body of Christ occurs on the following day, June 24th, the aforementioned feast shall be observed; the feast of St. John the Baptist shall then be transferred to the 25th, as to its proper day.' The question is whether, in the case of this translation, the parish priest is obliged to apply a Mass for the people on June 26th." A similar doubt was raised by the Primate of Victoriensis, referring to questions arising from the fact that, in the year 1886, the diocesan directory, in this concurrence of feasts, had ordered the following: 'Two Masses shall be applied for the people, one for the 24th, being the fifth day of the week, on which two feasts occurred, and the other for the 25th, being the sixth day of the week, on which the feast of St. John the Baptist was not celebrated, but only the office was transferred.'"

SYNOPTIC DISCUSSION. PARISH PRIESTS ARE CONSIDERED OBLIGED TO APPLY A MASS, ETC. Indeed, it is a thoroughly explored and certain doctrine that, on all feast days, even those suppressed, the Mass for the people must be applied by the pastors of souls, as after Trent.

[*Latin ed. p. 150*]

APAMIEN. AND VICTORIEN. Canon 23, Chapter 1, concerning reforms of the Sacred Congregation of Rites, in Pistorien and Praten, February 24, 1699. Innocent II, by apostolic letters, and Benedict XIV, by his constitution *Cum semper oblatas*, and finally, Pius IX, by his encyclical *Amantissimi*, have affirmed this. Furthermore, when a feast, and in this case, the feast of St. John the Baptist, is transferred to the following day due to the concurrence of another feast of greater importance, it would seem that everything prescribed for that feast day should also be transferred; therefore, the office, the rite of Mass, and even the application for the people. Indeed, if the proper day of the feast of St. John were June 25, then, certainly, the application of Mass for the people should also be observed on that day. It does not matter that the day of June 25, on which the memory of St. John the

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Baptist is celebrated, is not a feast of precept; therefore, the people are not obligated to attend Mass or to abstain from servile labor. However, among all these things, there is no absolute connection; but rather, the solemnity of the rite and the obligation of the application for the people can exist, without, at least in the present discipline of the Church, the faithful being obligated to observe the feast day. An example of this is found in the case of the feasts of the Apostles, and other feasts formerly of precept, which are now suppressed. PARISH PRIESTS DO NOT SEEM TO BE OBLIGATED TO OFFER MASS, ETC. On the other hand, when the rubric prescribes that "the feast of St. John the Baptist should be restored to the day of June 25, as if to its proper day," it seems to refer to the rite, the office, and the Mass of that day; it does not, at least directly and by itself, affect the obligations that accompany feast days, that is, the observance of the feast day and the obligation of the application for the people. And in truth, rubrics concerning ritual solemnities, and concerning the manner of celebrating Mass and the office, deal only with these matters; they do not, at least by themselves, regard or define what are feasts of precept, or how often pastors of souls are obligated to offer Mass for the people. To these matters – and, of course, taking into account the solemnity and the rubrics – belong the canons for the ordination, such as the constitution *Universa* of Urban VIII, 13.

[*Latin ed. p. 151*]

APAMIEN AND VICTORIEN. September 15, 1642, by decree of Clement XI; December 7, 1708, by brief of Innocent XII; by decree of Benedict XIV; and finally, by the decree *Amantissimi* of Pius IX; to which are added special laws, which may be in force in each city or region, as is most often the case in France. Furthermore, there is no mention in these laws, nor any special provision, whereby, with the translation of the feast of St. John to June 25th, the faithful are required to observe the feast day, nor are priests required to offer Mass for the people. Indeed, this obligation seems excluded by that moral principle, "which states that satisfaction can be given for a double precept by a single act, if everything prescribed by different laws is included in that single act." Scavini, *Theologia Moralis*, tract. 2, disp. unie., c. 7, q. 4. And this is the common opinion of the Doctors, as found in Scavini, *loc. cit.*, D'Annibale, vol. 3, § 420, and elsewhere. Indeed, this doctrine, at least analogically, is found in the decree *Amantissimi*, where Pius IX declares that "when the Divine Office, together with the solemnity, has been transferred to a Sunday, only one Mass for the people is to be offered." And this is made even clearer in the resolution given by the Sacred Congregation of Rites in *Treviren. Missae pro populo*, April 24, 1875, to which is appended the decree given by the Sacred Congregation of Rites in Oritana, May 23, 1846, together with the resolutions given on October 18, 1818, May 23, 1835, and in Ensilden, July 23, 1730. Furthermore, it is beyond all doubt that June 25th is a weekday, and that the faithful are

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entirely free from the obligation to observe it; indeed, those who insist on this seem to admit it. It is observed in Rome, and it appears to be accepted everywhere. However, if June 25th is considered a weekday for the faithful, it is not understood why it should be considered a feast day, and therefore burdened with the obligation of Mass, for the priests. For these two things, namely, the obligation to hear the Divine Office and the necessity of offering Mass for the people, are very closely related; indeed, they were originally simultaneous. But if today the observance of the feast day...

[*Latin ed. p. 152*]

152. APAMIEN AND VICTORIEN. It does not always concur with the obligation of offering the Sacrifice for the people, that is, in exceptions expressly defined by the apostolic constitutions. Therefore, besides these cases expressly excepted, such as the one presented, there always remains that the obligation of offering for the people is joined with the obligation of hearing the Holy Sacrifice. However, it is fitting to refer to the cited document from Treves, dated April 24, 1875 (.1), in which our case is most clearly defined. The Bishop explained that "in the city of Treves, each year on the fourth day of the week of the third week after Easter, the commemoration of the Holy Tunic of Our Lord Jesus Christ is solemnly celebrated, and indeed by order, which is preserved in the same Cathedral church for the great edification of the people. This feast occurred in the year 1871 on May 3; hence, the feast of the Invention of the Holy Cross of Our Lord Jesus Christ was transferred to the 11th day of the same month, and it was established in the directory of that Diocese: May 11, feria 5, is applied, for the votive Mass. The Invention of the Holy Cross, double, 2 days, was on the 3rd of this month." At the request of the pastors, the Bishop inquired of the Sacred Congregation of the Council whether the pastors are obliged to celebrate Mass for the people on the 11th of May. And the response was: "In the case under consideration, the pastor is not obliged; and this should be notified to the Bishop." After considering all of this, the Most Eminent and Reverend Fathers were asked to clarify the following doubt: Whether pastors are obliged to offer the Mass for the people on June 25, if, in this case, the feast of Saint John the Baptist is transferred to that day as its proper day.

RESOLUTION. The Sacred Congregation of the Council, having knowledge of the matter, on April 28, 1888, judged it fitting to respond: Negatively.

FROM WHICH IT IS UNDERSTOOD: I. From the translation of the feast of Saint John to June 25 by rubric, it does not follow that the faithful are obliged to observe the feast day, nor are pastors obliged to offer the Mass for the people.

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(.1) The cited document from Treves is available; Vol. VIII, page 602.

[*Latin ed. p. 153*]

APAMIEN AND VICTORIEN. 153 I I. For the rubrics concern the manner of celebrating Mass and the Divine Office, but they do not define which are the feasts of precept, nor how often pastors of souls are obligated to offer the Mass for the people; this is done by the canons or constitutions of the Roman Pontiffs. I I I. The obligation of applying the Mass on the day when the feast of St. John is transferred, seems to be excluded from the outset by moral principle, since by one act, a double precept is fulfilled, if in that act, whatever is prescribed by different laws is included. I V. It is not without reason if it is said that this question is logically defined by the Constitution *Amantissimi* of Pope Pius IX, in which it is decreed: "When, together with the solemnity, the Divine Office has been transferred to a Sunday, only the Mass for the people is to be celebrated."

MONTISPOLITIAN ACTS. March 24, 1888. Session 21, Chapter 3; Session 22, Chapter 3; Session 24, Chapter 12, concerning Reforms.

COMPENDIUM OF THE MATTER. The auxiliary bishop of Montispollitiana, after reporting on the state of the cathedral church, on the manner of distributing the daily alms, and on the custom of dividing the offerings, which prevailed in that chapter, requested the opinion of the Sacred Congregation regarding certain provisions which he had proposed to the Lord. And in his words: "The Constitutions of the Chapter of the Cathedral Church of Montispollitiana, composed by the Most Reverend Cardinal Bellarmine, Chapter 26, concerning the daily distributions, state: 'Each Canon who is present at each hour... shall receive, in each month, three grains.'" "And if, after the measure of the daily distributions has been completed, something remains from the fruits of the Church, that is, grapes, wheat, legumes, etc., it shall not be distributed to the Canons under the name of small gifts, but necessities shall be purchased."

[*Latin ed. p. 154*]

154. "Concerning the management of the estate, the useful things for cultivating the fields, and other goods of the Church, which must be preserved or increased. Since the Canons... all have their own share, and the rural properties of the same chapter, having been occupied and sold by the Government, are converted into the payment of the public debt, commonly called 'consolidated,' therefore the revenues that remain are no longer to be spent on the cultivation and maintenance of the fields; therefore, these same Canons, after deducting pious obligations and legacies for Masses, divide among themselves and the chaplains the entire sum of revenues; this division amounts to 500 pounds for each Canon and to 250 pounds for each chaplain, and it is not made in proportion to choral service, but in equal parts: so that the negligent profit almost as much as the diligent, since

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even the 'punctures,' which are quite small, are divided equally and indiscriminately among all. This method of dividing the distributions is detrimental to diligent choral service, and it is contrary to the canons, which stipulate that the 'punctures' should be divided only among those present. Furthermore, those Canons who serve the choir alternately throughout the week do not perform service for nine full months, whereas, contrary to the Constitutions, they are never absent from the choir, except on certain days. During Lent, only one part participates in the Matins, which is recited in the evening after Compline.

Therefore, in order to obtain more diligent choral service, to abolish the abuse of absence from the choir on certain days, and to divide the 'punctures' only among those present, the Bishop, with the favorable opinion of the majority of the chapter, requested the Sacred Congregation of Councils: 1. That the entire sum of 500 pounds, which is given to each Canon and 250 pounds, which is given to each chaplain from the common fund, be divided in the daily distributions; or that it be assigned to the increase of the benefices, up to a maximum of 50 pounds, and the remaining 450 pounds be distributed for choral service."

[*Latin ed. p. 155*]

MONTISPOLITIANI 155 2. Ut abusus insolitus aboleretur, punctationes absentium indiscriminatim, et aequalibus portionibus inter omnes canonicos tam praesentes quam absentes dividendi. Disceptatio Synoptica QUAE EPISCOPI PETITIONI FAVENT. Synodus Tridentina in Cap. 3, Sess. 21 de reformis, praescribit « in ecclesiis tam cathedralibus, quam collegiatis, in quibus nullae sunt distributiones cotidianae, vel ita tenues, ut verisimiliter negliguntur, tertiam partem fructuum, et quorumcumque proventuum et obventionum tam dignitatium, quam canonicatuum etc. separari debere et in distributiones cotidianas converti, quae inter dignitates obtinentes et ceteros divinis interessantes, proportionaliter... dividantur: salvis tamen consuetudinibus earum ecclesiarum, in quibus non residentes, seu non servientes, nihil vel minus tertia parte percipiunt.» Idemque repetit in Cap. 3, Sess. 22 et praecipit, ut distributio quotidiana eorum, qui servitium personaliter sibi competens non impleverunt, fabricae ecclesiae etc. arbitrio Ordinarii applicetur. Idipsum tandem iubet in Cap. 12 Sess. 24, ubi in usum revocat decretum Bonifacii VIII, iuxta quod, qui statis horis non interfuerint, distributionibus, quavis collusione aut remissione exclusa, careant. Ex quibus patet portionem praebendae in distributiones convertendam aequare, sin minus, tertiam partem fructuum, et quorumcumque proventuum et obventionum unius cuiusque beneficii. Cum itaque in themate beneficia ex duplici redditu coalescant, altero scilicet ex massa communi omnibus aequali, et lib. 500 pro canonicis, 250 pro mansonariis attingente; altero vero ex peculiari praebenda, quae diversa nec semper tenuis est; sponte sequitur de iure

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communi, pro unoquoque beneficio, diversam esse debere quotam in distributiones convertendam, iuxta uniuscuiusque beneficii redditus.

[*Latin ed. p. 156*]

156. Of this matter, it has been observed that, if a prefix of 168 *libellae*, which is almost equivalent to one-third of the entire canonical revenue, could be admitted for those canonries which receive a *praebenda* not exceeding 25 *libellae*; it should in no way be tolerated for others who are endowed with a *praebenda* of one hundred, two hundred, three hundred, or five hundred *libellae*. Nor would it be proper to maintain the contrary custom; for, as it is read in the *Cephal. Distrib.* of March 31, 1770, §. "The Sacred Congregation of Councils has always decreed that distributions, notwithstanding any contrary custom, should be assigned from one-third of the fruits of each canonry by the Bishop at each canonical hour, and that these should be divided only among those who are present and engaged in divine offices, as in Alecoandrina, book 3, Decret, page 22; Albanen, December 6, 1690; Carpenct, July 21, 1731; *Nullius Terrae Pontiani*, March 26, 1735." This prescription is to be especially observed, as the Sacred Congregation of Councils stated in Aretina, April 5, 1695, when the distributions are so small that they are practically negligible. Given these circumstances, it would seem that there is no doubt that the Bishop can increase the quota for daily distributions, at least for several of the canonries of his cathedral. However, regarding the specific question of whether the entire revenue of the common mass can be allocated to daily distributions, it is advisable to hold a positive opinion, given that the current revenue of the mass has succeeded those real estate assets which, as the Most Reverend Cardinal Bellarmine wished to distinguish from the *praebenda*, he had set aside for the common mass, and primarily for the daily service of the church. It would be wrongly objected that it would seem unjust to constitute the canonical revenues almost entirely, or at least primarily, from distributions. Indeed, there are several collegiate churches in which distributions at each hour of each day take the place of the *praebenda*. This state of affairs was not disapproved of, but rather approved by the Sacred Council in Bierden.

[*Latin ed. p. 157*]

MONTISPOLITIANI 157 tiae bris etc. March 3, 1792, in Vahen. Service of the choir, November 24, 1838. Indeed, it adheres to what is stated in Chapter 3, Session 21 of the Council of Trent, which seeks to preserve the customs of those churches in which those who do not reside there receive nothing, or less than one-third. It is evident that this disposition is in accordance with right reason, and contributes more to the divine worship, because those legitimately absent suffer no harm. For the Holy Office, in the aforementioned place, established that two parts of the distribution should be reserved, as if offered in the place of the absent. On the contrary,

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those who are negligently and illegitimately absent are to be punished with a greater penalty, so that they may be more diligent in performing their service, lest they lose the entire income. This seemed particularly opportune in the matter, since it sometimes happens that, for this reason, the chapter members are disunited, and absent from the choir during the most solemn times of the year. Regarding the other question, which concerns the practice in force in its chapter of dividing the stipends among all, whether present or absent, or without any reason for service, it was deemed that this could not be tolerated in any way. And to confirm this, the opinion of Lucidi, volume 1, page 296, number edited by De Vis. SS. Limin., was cited, where it is read: "The Holy Office maintained that it is an abuse to be completely eliminated, so that the same (distributions) are not distributed indiscriminately among the choir members, whether they are actually present in the choir or not, as in Carpenctorate, June 2, 1731, per sum. prec., and in Asculana, June 5, 1706, ad dub. 5. In this matter, although the custom of Aversa may have prevailed, and a chapter constitution may have been added, nevertheless, since both are abhorrent to the prescription of the Council of Trent, they are to be disregarded, and indeed, uprooted, as was most recently confirmed in Aesina Fallentiarum, December 22, 1860, per sum. prec.

THOSE THINGS WHICH SEEM TO CONTRADICT THE BISHOP'S PETITION.

[*Latin ed. p. 158*]

488. It has been noted, on the other hand, in the aforementioned chapter, that a custom exists which appears to have been established, derogating from the statutes of the Venerable Cardinal Bellarmine. Indeed, it is established by fact, and has continued for many years, as the chapter observes, that a portion is deducted from the revenues of the common mass, but the remainder, which is the larger part, is reserved and assigned to individuals, as if by title, without any consideration of service. This custom, in the part in which it contradicts the law of Trent and the decrees of the Holy Congregation, and reduces daily distributions to a sum below what is due, is undoubtedly to be condemned and reformed. But in the part in which it increases the benefits of stipends, and restores those that were too meager to a suitable amount, it may perhaps be tolerated. After considering both sides, the following questions were proposed:

I. To what sum should the quota for daily distributions be increased in this case?

II. Should the custom of dividing stipends equally among both diligent and negligent individuals be maintained in this case?

RESOLUTION. The Sacred Congregation, after examining the matter,

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decided on March 24, 1888, to respond as follows:

To 1. Affirmatively, to the full amount of the common mass, and this should be assigned to each by the prudent judgment of the Bishop, restoring, in the meantime, the choral service to the form prescribed by the Council of Trent and the capitular constitutions.

To 2. Negatively, and furthermore.

FROM WHICH THE FOLLOWING ARE DEDUCED:

I. According to the Council of Trent, chapter 3, session 21, concerning reforms in both cathedral and collegiate churches, in which there are no daily distributions, or if they are so meager that they are likely to be neglected, one-third of the fruits, revenues, and offerings, both of dignities and of prebends, etc., must be separated and converted into daily distributions.

II. Such distributions are to be made among those holding dignities and...

[*Latin ed. p. 159*]

MONTISPOLITIANI 159: Those who are interested in the divine services, must be proportionately divided according to the division established by the Bishop, even as if by the delegation of the Holy See, in the initial distribution of the fruits.

III. Those, however, who have not personally fulfilled the service that pertains to them, without any collusion or remission, shall lose the distribution of that day, and shall not be able to acquire any dominion over it, but it must be applied to the fabric of the church at the discretion of the Ordinary, as cited from O. Trid. cap. 3, Session 22, and cap. 12, Session 24 concerning reforms.

IV. Daily distributions can consist of a larger portion, namely, a third part of the revenues; indeed, there are several collegiate churches in which nothing at all is to be given, and the daily distributions take the place of a stipend. See.

V. This method of acting is in conformity with the disposition of Trent, which, as cited in cap. 3, Session 21, wished to preserve the customs of those churches in which those who do not reside, or do not serve, receive nothing, or less than a third part.

VI. The Holy Congregation of the Council has maintained that it is an abuse that must be completely eliminated, that distributions are indiscriminately divided among the clergy, whether they are actually present in the choir or not.

VII. Therefore, no attention whatsoever must be given to any contrary customs, or to the very capitular constitutions that establish such a division; indeed, since they are contrary to the prescription of the Council of Trent,

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they must be uprooted.

NIVERNENSIS. ACT OF MARCH 24, 1888. SUMMARY OF FACTS. The Bishop of Nevers stated: "Since, during the past year, the Orator has offered prayers to the Holy Congregation of the Council, so that various doubts might receive a solution and special faculties be granted for the celebration of a second Mass in several parishes of his diocese, the following response was received from the Most Reverend Congregation: - To the extent that they are not verified..."

[*Latin ed. p. 160*]

160 NEVERS. "Concerning the conditions established in the Benedictine Constitution, but which are only equivalent, recourse may be made for the granting of this faculty." "Therefore, in order to obtain these faculties, recourse is made anew to the Holy See today. Currently, in the Diocese of Nevers, there are several parish priests who celebrate the second Mass only on certain more solemn feasts, in order to provide greater facility for the faithful, either for attending Mass or for receiving the Holy Communion with greater devotion; and the parish priests affirm that this second Mass is of the greatest importance in both cases for preserving and increasing piety in their parishes. Moved by these reasons, the petitioner implores the granting of the faculty, so that, in the name of the Holy See, the aforementioned parish priest or priests may be permitted to celebrate the second Mass on the aforementioned more solemn feasts."

SYNOPTIC DISCUSSION: WHAT FAVORS THE GRANTING OF THE FACULTY. Indeed, from the Constitution of Benedict XIV, you have declared to us, and from the Glossa ad cap. v. Necessitatis De celebrat, it is understood that, among the reasons required for a priest to be able to celebrate twice in one day, besides those based on necessity, those that are derived from utility must also be included. However, it must be noted here that we are not speaking of the utility of the one celebrating, but of the utility for the one attending Mass, as taught by Cardinal Zabarellus in the aforementioned chapter, n. 3, and by Abutrio, n. 4, and by Vericellus, De Apostolicis miss., title IV, question 48, doubt 18, n. 201. And therefore, whenever there has been a true and notable utility for the one attending Mass, the Sacred Congregation has granted the faculty of celebrating twice. Thus, in Argentina, on September 17, 1850, although the Bishop requested the faculty of celebrating twice on the feast of the Circumcision, which day had been removed from the list of feasts by a dispensation from Cardinal Caprara, nevertheless, in order to somewhat compensate for the people's piety, since that day was still considered a feast, the Sacred Congregation granted the requested dispensation. Also, in Lingonen and Turonen, on August 14, 1878, (1) the petition of the Bishops was heard, although the faculty of celebrating twice was requested for a certain number of days.

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(1) Reported in Volume XII, 232.

[*Latin ed. p. 161*]

NIVERNEN. 164. On festive days, they were suppressed. Thus, in Mexicana on December 20, 1879, (1) and in De Tulancingo, and in Gratianopolitan, on May 10, 1884, and in others, in all of which, with the concurrence of necessity or spiritual utility for the people, the grace of binating was conceded by the S. C. But in the case whether this utility exists, it is deduced from the very words of the petition, where it is stated that the faculty of binating is of the greatest importance for preserving and increasing the piety of the faithful.

WHAT IS OPPOSED TO BINATING. But, on the other hand, Innocent III, in chapter *Consuluisti de celebrat, missae*, and Honorius III in chapter *Referente eod. tit.*, decreed that, unless necessity dictates, it suffices for a priest to celebrate only one Mass in a day. What is considered to be a necessity, or, as in the Glossary, for the sake of utility, after the Constitution of Benedict XIV. The common opinion of theologians and canonists in these three cases is enumerated, namely, whenever one priest has two parishes, and the people of either parish cannot come together; or when he has two populations so separated that one of them cannot, on festive days, attend the priest celebrating; or when the people are so numerous that all of them cannot, with undue crowding, enter the parochial church; and in all these cases, there is no other priest present who can celebrate another Mass. From these, it is gathered that the grace of binating is granted, when there is such a necessity or utility, which is connected with at least a moral impossibility of hearing Mass. And therefore, the S. C. in the case of De Tulancingo, through a prayer of the highest importance, concerning the faculty of binating, gave a response on May 10, 1884: "Provided that it is required not by convenience, but by necessity, for a grace of ten years, after having spoken with the Most Holy." But in this case, this impossibility of hearing Mass on solemn days does not appear, but only the facility or convenience of hearing the sacred rites and receiving the Holy Communion is involved.

(1) *Recole*, Vol. XIII, 340, and Vol. XVII, 157. *Acta*, Tom. XXI. *OC XLIII*.

[*Latin ed. p. 162*]

162. Regarding the dispensation for receiving the Eucharist more frequently, as it is drawn from the petition of the Bishop. This appears to be possible in all parishes where only one priest is present. Having stated these things, the question arose as to how the prayers should be said. RESOLUTION: The Sacred Congregation, having considered the matter on March 24, 1888, decided to respond: It is not advisable. FROM WHICH THE FOLLOWING IS GATHERED: I. The indult for more

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frequent Communion may be granted to a parish priest who either has two parishes, or two populations so separated that one of them cannot, on feast days, in any way be attended by the parish priest celebrating. Or, when the population is so large that the entire population cannot gather in the parish church. II. In a diocese, the conditions desired by the Constitution of Benedict XIV, "Declarasti nobis," are not verified, nor are they equivalent; since, from the more frequent Communion given on certain more solemn feasts, only greater facility for attending Mass or receiving the Holy Sacrament with greater devotion is provided to the faithful.

VENTIMILIA. MARRIAGE. On June 13, 1885, and May 19, 1888. Session 24, Chapter 1 concerning the reform of marriage. SUMMARY OF THE CASE. In the town of Carpasio, in the Diocese of Ventimiglia, on September 18, 1871, a marriage was celebrated before the altar between Catherine Saccheri and Anthony Scarella. However, because of the bride's tender age, since she had not yet completed her thirteenth year, the parish priest hesitated to bless such a marriage. Nevertheless, the girl's mother insisted, who was afflicted with excessive, and perhaps impure, love for Anthony, and, having the opinion of the Vicar General, to whom the girl had been brought, the parish priest proceeded to celebrate the marriage.

[*Latin ed. p. 163*]

VENTIMILIEX. 163 Amidst joyous feasts and completed nuptial celebrations, the couple cohabited for two months in the wife's home, and frequently engaged in marital relations. Meanwhile, the husband diligently endeavored to ensure that the mother-in-law would bestow certain temporal goods upon him; however, after eight months, partly spent in the wife's home and partly in the husband's, upon learning of her absolute refusal and impossibility of granting him the goods he demanded, the husband departed, and the wife returned to her paternal home. From that time forward, such was the estrangement between them that they no longer treated each other familiarly. Indeed, the woman subsequently entered into a civil marriage with another man, with whom she continuously lived in a marital relationship. Finally, perhaps stirred by the goads of conscience, she presented a petition to the Most Holy Lord, requesting that the marriage contracted with Anthony be declared null and void, either due to the fear and violence inflicted upon her, or, if that were not possible, that she be granted a dispensation from the valid but unconsummated marriage, affirming by oath that the husband's person had never penetrated her virginal enclosure. The Most Holy [authority] carefully examined the process concerning both petitions and the grounds for dispensation, and graciously granted [her request], considering the petitioner's poverty, and treating the matter economically, with the opinion of a Theologian and a Canonist, and with the observations of the Defender of the marriage, by

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virtue of his office.

A Synoptic Discussion.

THE OPINION OF THE CANONIST. The Canonist argued that the marriage was null for a twofold reason: because, firstly, there was a lack of consent, and secondly, because there existed an impediment of affinity arising from an illicit union. Regarding the lack of consent, according to the doctrine of Pontius on Marriage, I.4, chapter 14, number 16, it is stated that in the contract of marriage, due to the indissolubility of the bond, a consent is required that is more complete than that which confirms other acts and contracts. In the marriage in question, however, there was a lack of free consent...

[*Latin ed. p. 164*]

164. YENTIMILIEN. From the woman's perspective, the impediment was not found, primarily due to the lack of full development of her faculties. He argues that this lack of development is evident from the age of Catherine herself, "who had not yet completed her thirteenth year." He observes that while some may believe that intellectual development, stemming from the physical and sensory faculties of an individual, generally begins to manifest a perfect intellectual capacity after a certain period of time, for example, after 12 years, yet, considering the slowness of understanding derived from a particular temperament of the body, or from a lack of instruction, and other similar circumstances, it can indeed be deduced and believed that another period of time must be awaited before moral maturity is attained. This, which nature itself dictates, he says is confirmed not only by the manner of acting of the parish priest, who hesitated to bless the marriage; but also from the confession of Catherine herself, and of her father and mother: and also from the unanimous testimony of many witnesses, who, when questioned about the matter, unanimously stated that Catherine did not possess the necessary discretion at the time of her marriage, and therefore did not exercise true freedom; indeed, some testified that she was almost foolish. And if the Vicar General considered that the marriage could proceed properly, he adds, it was because he was attending to the matter of age, and not to the actual intelligence of the woman. However, besides the lack of full development of her faculties, he argues that Catherine's consent was absent because it was extorted by moral force. To prove this, he points out that all the witnesses testified that the mother had desired her daughter's marriage with incredible eagerness, and had used all means and methods to ensure that her daughter would consent to such a marriage; and therefore, she had exerted moral coercion upon her daughter. This, which is testified by the witnesses, is confirmed by the girl herself, who confesses about herself that she wept as she stood before the altar to celebrate the marriage, and that if it were possible, she would have wished to withdraw from such an act. With these premises established, he asserts that the unan-

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imous opinion of the canonists is that the tears, aversion, and lamentations of women concerning marriage, whether about to be contracted or already contracted, are signs.

[*Latin ed. p. 165*]

VENTIMILIEN. Sixteen were against, and the decision of the Rota, section 23, number 17, part 12, of the recent decrees, supports this. It cannot be argued that she actually lived with the man for eight months; for it does not appear in the process that she had true relations with him, but rather that she was distressed and harmed in her health. And even if she had had relations, it does not follow that she ratified her consent; because it seemed to her that the marriage, whatever its manner, was true and legitimate, and that Anthony was truly her betrothed, albeit unwilling. Therefore, she neither renewed nor denied her consent, because, as she stated, if she knew of any impediment that had made the marriage contracted invalid, she would immediately seek its annulment. However, even admitting the hypothesis that Catherine ratified her consent through relations, nevertheless, there was no marriage because of the impediment of affinity arising from a prior unlawful union. This unlawful union is argued, based on the testimony of several witnesses, who state that Catherine's mother greatly loved Anthony, and that there was public knowledge that Catherine had carnal relations with Anthony, and this suspicion became more serious because the betrothed, while discussing the future marriage, lived in the house of Saccheri. He adds that this is confirmed by the sworn testimony of both Anthony and, especially, Catherine's mother, who confessed on several occasions that, before Catherine's marriage, they had had carnal relations and intercourse with each other. The impediment arising from the prior unlawful union is removed, as was established by the Council of Trent, in Chapter 4, Session 24, concerning the reform of marriage, where these words are found: "The Holy Council, being led by most serious reasons, restricts the impediment which, due to affinity, is incurred through fornication and which invalidates a subsequent marriage, to those only who are joined in the first and second degrees."

[*Latin ed. p. 166*]

d 66 CONCERNING MARRIAGE. It is asked whether the judge can, or ought, to declare a marriage invalid, contracted before the Church, unless it is fully and perfectly demonstrated that the marriage was celebrated with a nullifying impediment. The consulter responds that, in general, this is indeed the case; however, concerning the proof, it is not always possible to ascertain from witnesses the existence of a prior impediment; for there are some impediments whose cause is hidden by the veil of modesty. Therefore, a complete demonstration by witnesses of an impediment of affinity arising from an illicit union is difficult, since neither kisses nor touches

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create affinity, but rather, perfect carnal union gives rise to affinity: argument from canon law, Divine Law, canon 27, question 2. However, when the spontaneous confession of the guilty parties is in complete agreement with the evidence, then moral certainty about it is to be held; especially if, as in this case, they confirm the truth with an oath. Therefore, in this case, since there is no doubt about the existence of an impediment of affinity arising from a prior illicit union; and since it is also established that neither the bridegroom nor the bride, nor the mother of either, requested a dispensation regarding this impediment; the canonist concludes that the marriage in question was null, not due to consent, but due to the impediment of affinity. OPINION OF THE THEOLOGIAN. The theologian, before examining the merits of the case, makes certain preliminary observations concerning the imperfections of the process, and first of all, notes that it does not appear in the documents whether the defender of the marriage, in accordance with his duty, delivered the sealed and signed interrogatories to be opened by the Chancellor or Notary, at his request, according to the decree of the judge in the examination. He also notes that it appears from the documents that the oath, by which the plaintiff and the witnesses were to confirm that they were speaking the truth, was omitted. Nor can it be gathered from these documents whether the defender of the marriage summoned the spouses to indicate seven persons related to them by blood or affinity, and, in the absence of these, seven neighbors; but rather, it appears that the judge himself summoned the witnesses for examination. Above all, it should be noted that the interrogatories addressed to the spouses and witnesses, especially concerning the lack of consummation,

[*Latin ed. p. 167*]

VENTIMILIEN. There were 167 marriages, so limited that many other things are lacking: thus, the witnesses were not questioned as to whether they believed the actress had spoken the truth in her testimony; nor was the father of the actress questioned regarding the consummation of the marriage. Furthermore, the process completely fell silent concerning the causes for a dispensation. Having stated these preliminaries, he endeavored to demonstrate the following: namely, that the matter does not concern either sufficient force and fear to invalidate the marriage, or the consummation of this marriage. Regarding the former, he observed, with D. Thomas 1-2 q. 6 a. 1, that force and fear presuppose a movement in the will, entirely opposed to that will, which is said to be commanded, and that, because of force and fear, the will itself emits [an act]; these movements or acts, by which the will avoids or rejects an object, are, according to Père Prey, in *Elucidatio S. Theologiae Moralis*, 2nd section, 3rd number, 56, called "nolitions" and are defined as aversion, hatred, sadness, and the like. Therefore, it cannot be said that someone, in his action, experienced force and fear, if he or his will did not previously have aversion, repugnance, or hatred towards

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performing that act. Therefore, in order for force and fear to be admitted in the case of Catherine, when she contracted marriage with Anthony, it must first be admitted that she had aversion, hatred, or repugnance towards Anthony himself, or at least towards the conjugal state. But this is not conclusively proven in the case of Catherine. Indeed, Catherine's confession rather reveals an indifferent mind before the counsel and promises of her mother; and after this counsel, instruction, and promises, reveals the mind of the girl wishing to express that she did not previously reject [the marriage], but that she previously did not know [the consequences]. Regarding this matter, he affirms that it must be excluded that Catherine was forced to love, otherwise it would have to be said that all those who are indifferent about some object, because they do not know it well, and after having received instruction and counsel,

[*Latin ed. p. 168*]

168. VENTIMILIEN. It is alleged that she was compelled [to consent], and therefore was not free to come to that decision. However, this contradicts common understanding, because counsel and instruction make [consent] voluntary, as stated by St. Thomas [1-2, question 6, article 3, ad 3]; whereas promises and flattery increase [voluntariness], as stated by St. Bonaventure [4th book, 29th question, 1st chapter, 8th paragraph]; Scotus [questions ultra, at the end]; Durandus [question 2, article 1]; and Henríquez [1st book, 11th chapter on marriage, chapter 9, paragraph 5]. It must not be considered that promises and flattery are equivalent to tacit threats; this is indeed verified when they are made by a prince or superior to a subordinate who resists, as stated by Sánchez [book 4, chapter 7, paragraph 3]. However, in this case, there is nothing to suggest that Catherine intimidated her mother and other relatives in order to prevent the marriage with Anthony; on the contrary, her responses indicate the opposite. Furthermore, there is no evidence that she gave any sign of opposition after the marriage contract was signed, for this opposition should have been particularly evident when the husband was separated from her and went to see his wife; but in these cases, the plaintiff rather showed the opposite. It is true that Catherine, when asked once if she had any aversion to the marriage, answered affirmatively, but she added that this response should not be considered, first because it directly contradicts two other responses; and second, because it is not enough to assert opposition, but it must necessarily be proven with witnesses, who would have testified that the plaintiff manifested her opposition; as stated by Cosci [book on the separation of spouses, chapter 8, paragraph 59]. There are no sworn witnesses present who have testified that they heard Catherine say anything against her marriage, or that they saw her do anything that would express such aversion. It cannot be admitted that she was not fit for marriage due to a lack of sufficient discretion. For the judgment regarding her suitability was

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submitted to the Episcopal Curia, which examined and questioned the girl regarding matters pertaining to the conjugal state; and it concluded that she could proceed with the marriage.

[*Latin ed. p. 169*]

VENTIMILIEN, 169. He argues that, above all, the testimony of the parents should be considered to demonstrate that Catherine was not forced into the marriage, because both the father and mother most strongly desire the dissolution of their daughter's marriage, so that she may lawfully contract a new marriage according to ecclesiastical rites with another man, with whom she is already living civilly. Nevertheless, both deny that the daughter was forced into the aforementioned marriage. And the mother, to whom the presumption of coercion is particularly attributed, asserts that she only gave her advice. However, advice and persuasion do not invalidate the free will of the contracting parties, as the Rota teaches in decision 336, paragraph 11. Furthermore, Cosci, in *Liber 1 De Separatione Conjugiorum*, chapter 5, paragraph 76, states: "The mere persuasion of parents does not invalidate the marriage of their children." The witnesses, however, who seem to suggest that the marriage took place through the mother's influence, only generally affirm this. However, it is the common teaching of D.D. that, as stated in Cosci, *Liber 1 De Separatione Conjugiorum*, chapter 8, paragraph 77, witnesses who generally state that the marriage was contracted at the father's command, do not necessarily prove coercion. Therefore, the theologian concludes that it is not sufficiently established that there was force or fear in this case. Regarding the consummation of the marriage, he asserts that, from the records of the proceedings, it cannot be conclusively proven that the woman was unable to have marital intercourse. And to the woman who claims that the marriage was not consummated, no credence should be given, because three presumptions are arrayed against her. The first is that, during the marriage, she never manifested this to her husband, and only now, for the purpose of obtaining the dissolution of her marriage with Anthony, does she claim it. The second is that, if she were truly of a chaste conscience, she would not have lived civilly with another man. The third is that, in the proceedings, it is not recorded that any witness affirmed that she testified truthfully before the judge. Indeed, the credibility of the plaintiff is undermined by the sworn testimony of her mother, who affirms that she did not force her daughter; whereas the daughter swore that she was forced into that marriage. Therefore, there is no valid presumption regarding this lack of consummation.

[*Latin ed. p. 170*]

470. TWENTY THOUSAND. Regarding the possibility of determining, through the questioning of the judge concerning the time at which the woman began to menstruate, whether she was capable of procreation. Be-

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cause, as Sánchez teaches, following other doctors, in book 7, disputation 104, paragraphs 31 and 34: "Menstruation in *foemina* suffices to prove her aptitude for generation." However, if it is much more than seven years, then she is presumed to be fit for marriage solely from the opening of the womb. Therefore, a man could have reserved the virginity of the woman, and consummated the marriage, even if she had not yet had menstruation. Having considered these things, it is concluded, from the process records, that it cannot in any way be proven that the marriage was not consummated; consequently, it does not appear to be the case. Furthermore, concerning the impediment of affinity arising from an illicit union between the bridegroom and the bride's mother prior to the marriage, the aforementioned theologian, in chapter 3, section on "he who acknowledges consanguinity," and chapter 5 of the same section, as well as Reiffenstuel, book 4, title 19, on divorce, section 1, paragraph 16, and Sánchez, book 2, disputation 45, paragraph 33, argue that it is not sufficient to dissolve the marriage due to the impediment of affinity arising from an illicit union, based solely on the confession of both spouses. 1. Because sometimes spouses may conspire against the marriage, and would readily confess to incest (or another impediment), if they believed that the judgment of the Church would be in their favor. 2. Because the confession of one's own wickedness is not necessarily reliable; *Digest*, book 48, title 18, section 7; for he who accuses himself appears to be acting from error or deceit; but it is necessarily required that it be either public and notorious, or that it be confirmed by suitable witnesses who provide reasonable and pious evidence. Reiffenstuel states, in book 2, title 19, on divorces, "because the cause for dissolving the marriage, with regard to the bond, is one of the most serious, and involves a great prejudice to a third party, and redundantly affects the sacrament, consequently, it requires full and perfect proof." But in this case, the impediment is not public and notorious, since the confession of the mother and the husband to the ecclesiastical court has made it manifest.

[*Latin ed. p. 171*]

VENTIMILIA. 171. Truly, the confession of a man, according to the aforementioned principles, proves nothing by itself, and even less so in this case, because he himself wished to confirm what he had stated before the Judge, by signing it. Nor does the confession of the mother of the bride prove anything, for the reasons mentioned, and because of the disposition of Alexander III, in Chapter 22 concerning witnesses, where it is stated: "The testimony of the mother is suspect," when the daughter claims to be older than the man. And concerning the statement of the mother alone regarding the impediment of the party, it is true that marriage is impeded, but the contract is not dissolved. Therefore, other witnesses must be sought, according to the passage cited in the aforementioned chapter: "If, however, the marriage is established, it should not be dissolved without the oath of

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several." Furthermore, according to Be Luca, *De Matrim.*, discourse 13, n. 3; Scaccia, *De Sententia* and *Re Iudicanda*; and Cosci, *Lib. 2 De Separatione Conjugum*, chapter 14, n. 3, the carnal union of a man and a woman is an act that does not fall immediately under the purview of a witness, but rather mediately, namely, through certain acts that lead to that end, and the effect of the union is ordered. Therefore, only those acts, or *media*, that is, the actions of the witness, can be proven, so that a proof of the union can be formed from them. But these acts are nothing other than indications, presumptions, and conjectures. However, when none of these indications, presumptions, or conjectures have been stated by the witnesses, it follows spontaneously that such witnesses are not those who provide legal and complete proof. Concerning the three witnesses who testified regarding the reputation and the words that were circulating in the town, more must be considered: 1. That these witnesses testified about the words of others and the rumors of the public, and not about their own knowledge. 2. That these words are not supported by any of the presumptions and conjectures prescribed by law. Or, at most, they indicate that the mother of the bride did not have, but rather would have, dealings with Anthony. Indeed, from the testimony of the Archpriest, it is gathered that...

[*Latin ed. p. 172*]

172 VENTIMILIEN. It is possible that such an impediment existed. For if he himself had known that the marriage was invalid, or at least that the alleged notoriety had a lesser foundation, he would undoubtedly have warned the Bishop. Or at least, it should be presumed that he himself, for the sake of advising the consciences of the couple, requested a dispensation from the Holy Penitentiary, as prescribed by Benedict XIV, *Instit. 87, n. 9*, and that no document of such a dispensation could be found in the archives, because in these cases, grace is usually granted with the clause: "after execution, the letters are to be burned"; and therefore, it is in no way possible to affirm that the actress's marriage to Anthony was null. Nor was the practice of the Holy Congregation different, as can be seen in a case from Ravenna, reported by Prospero Lambertini, which is found in his collection, n. 226, although an impediment from an illicit union was reported to the Diocesan Curia. Also, in a case from Verula, July 5, 1836, and in a case from Risauri, May 22, 1875, both betrothed were present and confessed. Also, in a case from Turin, August 12, 1882. Having considered these things, the theologian concludes from the records that it is not sufficiently established: 1. that there was sufficient force and fear to invalidate the marriage; 2. nor that there was a presumed impediment of affinity; consequently, the marriage stands firm in this case.

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE. The defender of the marriage states that he adheres to his position not only for the sake of his office, but also from the innermost conviction of his mind: there-

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fore, he contends that neither the defect of consent nor the impediment of affinity exists in the proven facts, nor that there is proof of the lack of consummation of the marriage. And beginning with the defect of consent, he states that in fact: 1. The marriage was publicly celebrated before the Church, and no one present observed any sign of coercion. 2. A few days before the wedding, the bride, together with the groom, appeared before the Vicar General for spiritual matters, and clearly manifested her consent. 3. Finally, she went to the parish priest of Monte Alto in order to perform the sacramental confession, because both her own parish priest and her confessor were opposed to this marriage. 4. On one day, she spoke to the priest Sacco...

[*Latin ed. p. 173*]

173. Having inquired, it was answered that she freely entered into this marriage. 5. After the marriage was consummated, for a period of two years, they cohabited, with intervals of seven months interspersed, and, although the outcome of marital relations was uncertain, they endeavored to fulfill their conjugal duties; and, when the husband had fled from his wife's house, the bride followed him twice. 6. Finally, at the end of the aforementioned two years, Mary never complained of the forced marriage, nor did she say farewell to her husband, but rather she was expelled by him. Therefore, Mary should not be believed when she asserts that she has always had an aversion to this marriage, because this confession, when considered in conjunction with the preceding, concurrent, and subsequent events of the marriage, is entirely contradictory. Furthermore, it is well known that a confession made in favor of the confessor is not to be given much weight, unless it is supported by witnesses. In this case, however, such witnesses are entirely lacking. Moreover, it is to be considered worthy of belief that she entered into the marriage because of the persistent pleas and promises of her mother. It is not sufficient that the witness Ietriko testifies that he heard this mother making such persuasions, because it must also be proven that Mary suffered greatly from these exhortations, to the point that she chose marriage as a necessary remedy against her mother's annoyances. *Barbosa, vot. decis. 127, n. 10*. However, it has only been proven that the girl suffered greatly from the parish priest and confessor, who were discouraging her from marriage. The testimonies of witnesses must be held in no regard, since they are expressed in general terms, while the specific facts must be proven, namely, the ways in which the mother urged the daughter to marry, and the ways in which the daughter showed her resistance. Do not say that it is impossible to prove, through witnesses, the girl's resistance, because, although she was made to consent through deceit, she was not willing. Since the assertion of deceit, even if true, does not reveal that Mary was unaware of the marriage, because the deceit was not about the substance of the marriage, but about its quality, which, for

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this reason, does not invalidate it, even if...

[*Latin ed. p. 174*]

17f. Regarding the alleged cause for nullity of the marriage, Sánchez, in *De Matrimonio*, book 7, disputation 18, number 19, states that nothing else should be held in greater esteem. Furthermore, it is asserted that the bride's mother, before the celebration of the marriage, had carnal relations with Anthony, and therefore, because of the impediment of affinity, this marriage must be declared null.

Although it may seem unlikely that a woman of fifty years would be consumed by adulterous desires, and that a young man of just over twenty years would be so captivated by an elderly woman, it is nonetheless more likely that a false image is being presented, as stated in *Rotuli Decisorum*, 335, number 31, part 14. He adds that, given the late and highly suspect confession of the lovers, only ambiguous suspicions of the populace remain, which the best pastor would vehemently deny. Therefore, he argues: either those suspicions are false and should be rejected, or the prudent pastor, who knows them, should provide for the case with an apostolic dispensation.

Finally, with regard to the asserted lack of consummation of the marriage, he considers it superfluous to expend many words. For, he says, the cohabitation of the spouses, lasting for two years with interrupted intercourse, is not only not proven, but it is impossible to demonstrate that either spouse or both did not suffer from impotence during that time. Furthermore, the wife, upon whom all suspicions are focused solely because of her age, was not yet twelve years old when she married, and was fifteen years old when she separated from her husband. Lastly, the signs of virginity have not been examined, nor can they be examined now, since the mother has already given birth.

Given these circumstances, he is confident that the petition of Mary will be rejected, or, if a response is given, it will be: "Further and more thorough investigations are required."

With these premises established, the following questions are to be addressed:

I. Does it definitively establish the nullity of the marriage in this case? And if so, in what way?

II. Should the Most Holy [Father] be consulted regarding a dispensation for a marriage that is valid but not consummated in this case?

[*Latin ed. p. 175*]

VENTIMIGLIA. 175. RESOLUTION. The Sacred Congregation, on the 13th of June, 1885, deemed it fitting to respond in the following manner, after considering the matter: The evidence was delayed and supplemented, according to the instructions to be given by the defender of the marriage

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bond, by virtue of his office. Upon receiving the rescript of the Sacred Office, the Bishop, having considered the circumstances, decreed that numerous difficulties existed in completing the proceedings properly, because the Pago of Carpasio is almost inaccessible and suffers from a lack of clergy; therefore, he requested that he be granted the faculty to conduct extrajudicial investigations. After hearing the defender of the marriage bond before the Sacred Congregation, and after an audience with the Most Holy Father, a rescript was issued: "The faculty is granted, provided that the order prescribed by the rules is observed in all essential matters." Subsequently, according to the questions posed by the defender of the marriage bond (who was absent), nine witnesses were subjected to examination, all of whom substantially agreed in affirming the same facts. NEW THEOLOGICAL OPINION. The theologian, after certain considerations, expressed his opinion regarding the absence of the defender of the marriage bond during the examination of the witnesses, stating that, according to the Benedictine rule and the Instruction of the Sacred Congregation of August 22, 1840, his presence is necessary and pertains to the substance of the procedure; concerning the merits of the case, he argued the following two points: 1. That the marriage in this case was null from the lack of sufficient discretion in the woman; 2. That the marriage remained unconsummated, because, due to a diminished physical condition at the time when the woman cohabited with her husband, she was unable to permit sexual intercourse. Regarding point 1, he stated that, according to the unanimous opinion of the Doctors, two things are necessarily required in marriage contracts, namely, knowledge, or the judgment of discretion, by which one understands what one is doing, according to Pirring, *lib. IV, tit. 1, sect. 1, n. 85; and then, the legitimate age, namely, puberty, which begins in males after the age of 14, and in females after the age of 12, unless the malice or sagacity of nature compensates for the lack of age. To this, Barbosa in *Cap. Puberes III, De desp. Impuber, n. 3*; Cuvarruvias, *De matrim., par. 2, cap. 5, n. 5*; Gonzalez, *Cap. Tibi non est consensus II, de Desponsat. Impuber, n. 7*; and St. Thomas concur.

[*Latin ed. p. 176*]

176 VENTIMILIEN. *Maslib.* IV, dist. XXXVI, quaest. 1, art. 5; Sánchez, *post Glossam*, lib. VII *de matrim.*, disp. IV, n. 21 et 22, ubi dicit non sufficiere parvitatem, sed requiri maximam discretionem. At puellam in casu, licet esset duodecim annos et novem menses nata, et consequenter pubertatem a iure praescriptam iam esset consecuta, nihilominus ad discretionem sufficientem, ut se vinculo maritali obligaret, nondum pervenisse ex unanimi testium noviter adductorum iurata depositione dubio procul deduci. Re sane vera omnes testes in id conspirare, ut convincant actricem tempore celebrationis matrimonii cum Antonio fuisse puellam de rebus mundanis omnino ignaram, sine ulla malitia, puerilibus iocis unice intentam, nondum praeditam capacitate discernendi quid

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ageret, adeo ut fundaretur dubium, quod in matrimonii celebratione nesciret sententiam affirmativam a negativa distinguere. Hancigitur puellam esse veluti manu ductam solo arbitrio suae matris, quae donis et promissis, uti neri solet cum parvulis, nondum discretione praeditis, curabat ut ipsa diceret utique vel minime, prout eidem matri placebat. Merito igitur iuratos testes unanimiter affirmasse, illud matrimonium non filiae, sed matris voluntatem contraxisse. Hinc totius Carpasii iram et detestationem contra matrem; hinc communem in illis oppidanis persuasionem, quod matrimonium fuerit nullum. Neque obesse quod ius praesumat sufficientem discretionem in illa, quae ad pubertatem pervenit, et quod in ea aetate validum noscatur ab Ecclesia matrimonium, respondet enim cum Gonzalez, *lib.* IV, *decr.*, tit. 11, cap. Ubi non est consensus *de Desp. Impub.*, n. 5, quod « licet aetas duodecim et quatuordecim annorum communi et assiduo usu ad matrimonium sit; tamen si in illa aetate inhabiles reperiantur ad contrahendum, non sustinetur matrimonium inter eos celebratum; quia ea re semper veritas attenta fuit, non iuris praesumptio aut praescriptio. » Quoad 2. sustinet matrimonium nullo modo a sponso.

[*Latin ed. p. 177*]

VENTIMILIEN. The marriage was not consummated due to the lack of capacity of the bride. This is evidenced not only by the testimonies of the bride and her mother, but also by the testimonies of other witnesses presented in the new process, who state that they heard the complaints of this couple repeatedly and in various circumstances, and that they witnessed the husband's anger and resentment towards his wife, because they were unable to consummate the marriage, due to the girl still being incapable of carnal intercourse, and they are certain that the marriage was truly not consummated. Therefore, as Cosci states, after others, in book III on separations, chapter 2, paragraph 254, namely, that "even violent presumption is given by the public and common voice" regarding the lack of consummation, both immediately after the marriage among all the household members, and successively throughout the entire town or city; chapter 11 on presumption; chapter 27 on witnesses. Violent presumption is supplied by concurring fame. Therefore, since, from the newly presented witnesses, together with the witnesses from the first process, it is sufficiently established that the bride, at the time of the celebration, did not possess sufficient discretion to bind herself with the marital bond; and therefore was incapable of giving the necessary consent to enter into marriage, for without sufficient discretion, consent in marriage cannot be given, as Sánchez states in the cited work, paragraph 12: it is concluded that the marriage with Anthony was null. Since the bride has separated from her husband and now desires civil marriage, and therefore there is no remedy for the revalidation of the marriage, the consultant believes that this nullity can

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be publicly declared by the oracle of the Most Holy Name, especially since it has been proven that the marriage was not consummated.

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE. The defender of the marriage primarily observes that in the records of the new process, nothing is contained regarding impediments of affinity, nor of force and fear, and that the party did not take the oath, nor did he attend the examination of witnesses, and therefore the new records are vitiated and of no effect.

[*Latin ed. p. 178*]

178. Although the age may be decreasing, and even though a dispensation has been granted concerning non-essential solemnities, after these considerations, proceeding to the judgment of Catherine, it is observed that, having celebrated marriage, she had already attained puberty. Indeed, the doctrine of Saint Charles Borromeo on marriage, book 7, disputation 103, number 27, states that "proximity to puberty suffices to presume discretion" necessary for the most serious and perpetual bond of marriage. Nor are the witnesses to be heard, who, by exaggerating the simplicity of the girl, proclaim her to be slow and dull-witted. Furthermore, it is established that Catherine avoided her parish priest because he opposed the marriage; that she never spoke with her confessor about the marriage; and that, on a certain day, when the confessor, and especially Stephen Scorella, were speaking about the marriage, she gave such a response that it not only demonstrated a lack of discretion necessary for the proper celebration of the marriage, but also revealed an abundance of malice in Catherine. Moreover, the witnesses do not offer anything better to argue the lack of discretion in Catherine, except from the disposition of her members; for, as Sánchez teaches in *De Matrimonio*, book 7, disputation 104, number 15, marriage can take place even if the person has not yet attained the power of coition, and that a lack of this power does not necessarily imply a lack of discretion, or vice versa, as Sánchez states in the same place, number 27. However, concerning the assertion that Catherine did not provide credible testimony when claiming that she lacked the power of coition for the consummation of the marriage, it is not likely that Anthony, a young man, slept for two years with a stump and a useless piece of wood, as the unanimous testimony of the witnesses affirms. Especially if it is considered that Catherine, in the absence of her husband, embraced another man, from whom she conceived a child more than once. The depositions of the witnesses affirming Catherine's inability are, therefore, inventions, because Catherine persuaded...

[*Latin ed. p. 179*]

VENTIMILIEN. Number 179 concerns a case where a party claims to have struggled greatly against marriage due to certain fabrications. Indeed,

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Catherine, at a time when there was no suspicion, attributed all her troubles and the dissolution of conjugal life, not to impotence in the marital act, but to financial matters. Testimonies regarding the wife's impotence, given by the husband to certain witnesses, are deemed to have no bearing on the matter, both because they do not encompass the entire period of cohabitation, and because the most unfortunate of men does not deserve to be believed. Given these circumstances, without entering into a discussion regarding the necessary causes for a dispensation, a negative response is given to both questions. Therefore, having stated these preliminaries, the questions to be addressed are: Question I. Does the nullity of the marriage exist in this case? And, in the negative. Question II. Should the matter be brought before the Most Holy Congregation for a dispensation from a marriage that is valid but not consummated in this case?

RESOLUTION. The Sacred Congregation, having reviewed the matter, decided on May 19, 1888, to respond as follows: To Question 1, affirmatively, with the preliminary actions taken. To Question 2, provisionally.

FROM WHICH THESE CONCLUSIONS ARE DERIVED:

1. From the Benedictine Constitution, it is required that the Defender of the Bond must always defend the validity of the marriage in any judicial proceeding; it is necessary to examine the witnesses, both orally and in writing, to defend the validity of the marriage, and that nothing which has been done in the judgment, without the legitimate citation or notification of the party, is valid, irregular, or null.

2. And, according to the instruction of the Sacred Congregation of August 22, 1840, absent parties, at the request of one party, or even if the other party is silent, must be examined by the Bishop of the diocese in which they reside, according to the questions prepared by the Defender of the Bond, and the examination, sealed and signed, must be transmitted to another suitable person appointed by the same Bishop, who will fulfill the requirements prescribed by Benedict XIV, and who...

[*Latin ed. p. 180*]

180. VENTIMILIEN. Debet adimplere officium Defensoris validitatis matrimonii et participare in examinatione.

181. Defensor vinculi, ex officio, debet tradere interrogatoria clausa et sigillata, quae, cum hoc postulatum fuerit, et per decretum iudicis in acta examinationis, debent esse aperta a Cancellario seu Notario, ut interrogandi sint coniux instans pro nullitate matrimonii, et alii de iure examinandi.

182. Postquam examen completum est, actor et testes debent se subscribere et iuramentum emittre, quo confirmare debent se verum dixisse.

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183. Coniuges ipsi a Defensore citandi sunt, ut indicent septem sibi ipsis sanguine vel affinitate coniunctos, et, si hoc deficit, septem vicinos.

184. Et, si agatur de dispensatione matrimonii, interrogatoria instituenda sunt tam super inconsummationem matrimonii, quam super causas dispensationis.

185. Interdum Sacratissimo Principe indultum fuisse, ut, pro probatione inconsummationis, informationes extraiudiciales admitterentur.

186. In contractibus matrimonii duo necessario requiriuntur, scilicet scientiam, sive iudicium discretionis, quo quis intellegit, quid agat; et aetatem legitimam, nempe pubertatis, et haec in masculo post 14 annum, in femina post 12 incipere, nisi malitia, sive sagacitas naturae aetatem suppleat.

187. A iure praesumitur sufficientem discretionem in illis, qui ad aetatem pubertatis pervenerunt, et validum matrimonium in illa aetate contractum, excepto tamen casu, quo inhabiles ad contrahendum reperiantur, quia in ea re semper veritas attenta est, non iuris praesumptio aut praescriptio.

188. Violentam praesumptionem praebet, publicam et communem vocem, super non secuta consummatione, tam statim post matrimonium apud omnes domesticos, quam successive per totum oppidum seu civitatem.

189. Matrimonii contractum, propter vinculi indissolubilitatem, talem consensum requirit, qui uberior sit illo, quo alia pacta alique contractus firmantur.

[*Latin ed. p. 181*]

XX. In the matter of marriage, the absence of free consent is not only present where fear or coercion intervenes, but also from a lack of full development of the criterion.

XXI. Tears, aversion, and lamentation of women, concerning marriage, whether for its contraction or its consummation, are to be considered signs of negative consent.

XXII. The impediment, which, due to affinity contracted through fornication, invalidates a subsequent marriage, is restricted only to those who are joined in the first and second degrees of consanguinity, as stated in Session 24 of the Council of Trent, chapter 4.

XXIII. To invalidate a marriage, on account of an impediment of affinity arising from an illicit union, it is not sufficient for both spouses to confess, but it is necessarily required that it be either public and notorious, or that it be confirmed by suitable witnesses who provide reasonable and trustworthy evidence.

XXIV. Providing full demonstration through witnesses of the impediment of affinity is often difficult, because it is not kisses, nor touch, that generate affinity, but rather it arises from a perfect carnal union; which cause is usually concealed by the veil of modesty.

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XXV. Solely demonstrating an illicit union through circumstantial evidence can never suffice, because it excites suspicion, but does not provide certainty. True moral certainty is obtained only when the spontaneous confession of the guilty parties is most in accordance with the circumstantial evidence, especially if they confirm the truth under oath.

XXVI. In the matter of marriage, it may appear that no marriage has been declared, especially due to a lack of sufficient discretion on the part of the woman, or due to a lack of consent to be bound to the man by the marital bond.

[*Latin ed. p. 182*]

182 SQUILLACE. ERECTION OF A PARISH. On May 19, 1888. Session 24, chapter 13, concerning reforms. SUMMARY OF THE FACTS. In the year 1886, the Bishop of Squillace, relaying the petitions of the inhabitants and the municipal government of Mongiana, reported that this village had gradually developed and grown alongside a military factory established there by the government approximately a century ago; it now numbers 1200 inhabitants; but it lacks a proper parish priest. Until recent years, a military chaplain, sent by the government to provide spiritual care for the workers of the factory, had also been delegated by the Bishop to perform parochial ministry for the surrounding population. However, with the cessation of the government's provision of a chaplain, it had become customary for the Ordinary to send a priest to care for the church and administer the sacraments to the people. The people and the municipal government, however, were urging that this church be erected into a parish and that they be provided with a permanent pastor. But there was an obstacle: the lack of a suitable endowment. The Bishop, however, stated that he believed that the people, even though poor, could contribute something each year with the favor of a priest appointed by the Ordinary; furthermore, the church had been restored and beautifully decorated through common contributions. Therefore, it seemed that support would not be lacking. The syndic also endeavored, with religious zeal, to persuade the civil government to provide something in favor of this church. But the government responded that it would provide nothing until the aforementioned church was erected into a parish. Therefore, the Bishop requested the authority to erect the parish, despite the lack of a certain endowment. But it was decided that one should not commit oneself to something uncertain, and therefore the matter was deferred: "Report." But in these days, the municipal authorities, and the entire population,

[*Latin ed. p. 183*]

SQUILLACEN. 183 souls, indeed, and even more, have again petitioned the Sacred Congregation for the granting of a benefice. The Synoptic report suggests that the granting of this benefice appears to be DENIED. Further-

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more, the parish priest of that territory in which the Pago of Mongiana is situated should certainly be heard, as he would suffer some detriment, at least with regard to the extension of his jurisdiction. This, indeed, would be in accordance with equity, and with the rule of law in Clement VI, Decretal, 1, § 29, and with the statutes of the Benedictine monks, as well as with the writings of D.D. Reiffenstuel in book 8, title 12, number 72, and with the ordinary practice of the Sacred Congregation. But, besides this difficulty, there is also a lack of a certain suitable provision that militates against the granting of the benefice. For, in the absence of such a provision, the parish should not be established, as both natural justice and positive law absolutely require. For he who serves at the altar ought to live from the altar, and no one should serve without remuneration; but rather, everyone should justly seek a fair compensation from the work that he performs, from which he may be able to live. Therefore, to erect a benefice or to send ministers to labor without a suitable and certain stipend, is neither proper nor expedient. As is also positively established in chapter 39 of Extirpandae, De praebenda, Council of Trent, session 21, page 4, and in the constitution of St. Pius V, Ad exequendum. Furthermore, the suitable provision for curates is generally fixed at 100 scudi, not only by the Tridentine Council, session 24, chapter 13, De reform, but also by St. Pius V, cited constitution, and by the Rota, paragraph 18, volume 1, decision 374, number 1, Recent, with common consent. But although this assessment is not absolute, and in this matter no certain rule can be assigned, but rather the judgment of the judge should prevail; nevertheless, what the law, both natural and positive, absolutely requires is that this provision, whatever it may be, should be sufficient for honorable living and certain. Furthermore, in this case, this is not found. Indeed, the subsidy that the municipality provides to the rector is meager, namely, approximately 300 livres, and uncertain, for...

[*Latin ed. p. 184*]

184 SQUILLACEN. Hoc facilius suspendere poterit, aut fortasse etiam debet, eius loco subrogando subsidium, quod ex administratione fundorum cultus sperat obtinere, erecta semel paroecia; nam municipium in arcta conditione oeconomica versatur. GRATIA INDULGENDA VIDETUR. At ex altera parte, sedulam considerationem merentur haec, quae municipes S. C. C. conscribunt: In hoc municipio una est ecclesia, extructa pro militibus et addictis fabricae *Ferrariae* a praeterito gubernio; a quo deputabatur capellanus, qui vices gerens capellani militaris, cum dependentia a capellano exercituum maiori, quoad vero res religiosas pro fidelibus ibi collectis, sub Ordinarii iurisdictione permanebat. Anno autem 1865, novum gubernium, divendita fabrica *Ferrariae*, suppressit regiam cappellani; ecclesia tamen carens omni dote, et in proprietatem transiens municipii, voluit consulere spiritualibus populi illius necessitatibus, sub Episcopi iurisdictione. Municipium nunc solvit favore huius

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ecclesiae libellas annuas 390, diribendas in varios titulos; sed iam petit a gubernio, ut subingrediatur in hoc onere, ut par est; et gubernium adpromisisse subsidium, si dicta ecclesia ab auctoritate ecclesiastica erigatur in paroeciam. Quod enixis precibus expetierunt municipes, ut bono spirituali 1400 fidelium consuli congrue possit. Quibus stantibus, non videntur peremptorii valoris esse obiectiones contra gratiae concessionem promotae. Non prima, circa defectum consensus parochi territorii, ubi nova cura erigi postulatur. Etenim nihil detrimenti ex hoc facto sentire poterit territorii parochus: non detrimentum iurisdictionis; nam iurisdictio in eo pago limitrophus parochus non videtur unquam exercuisse; cum usque in praesens capellanus militum de mandato capellani maioris, regeret animas in officina *Ferrariae* degentes, et ex delegatione Episcopi familias circum iacentes; hodie vero rector ecclesiae illuc ab Episcopo directe mittitur. Non damnum materiale; quia beneficium hoc parochiale nihil unquam contribuii, neque a

[*Latin ed. p. 185*]

SQUILLACEN. 185. At the beginning, when the church of Mongianna was established, it was not erected as a parish, and today, it is being considered for its elevation to a parish. Furthermore, a division [of a benefice] is particularly odious, especially if it is made of the benefice itself or of the goods belonging to the beneficiary; for in this way, the status of the old benefice is harmed, and the means of honest sustenance for the parish priest are diminished; but a division only of jurisdiction or territory, especially in this case, does not in any way harm the economic condition of the old benefice, but it can greatly offend the ambition of him whose jurisdiction is restricted. However, this should not be considered in comparison with the good of souls that results from the division of jurisdiction; nor can it be applied to the present case; because, as stated above, the jurisdiction was already, in fact, divided. Moreover, two cases must be carefully distinguished in the division of a parish, namely, the division of the benefice and the division of the territory, and the former is particularly odious, while the latter is less so, as is stated in Torricelli, *De annon., benef.*, question 882, number 2; chapter 33, *De praebend.*, S. C. C., August 23, 1755; Pal lottini, volume 28, number 33; Garcia 12, IL 113; Leurenius 3, 909, 1, and in the Acts of the Holy See, volume 10, page 269. Therefore, from all of these things, it does not seem that the omission of the hearing of the parish priest of the territory is permissible. But neither is a vague or insufficient offering to be absolutely considered adequate. Indeed, although the Tridentine Council and the constitution *Ad exequendam* state that the offering should be in 100 scudi, this measure is not certain. Rather, in the constitution *Ad exequendam*, it is more precisely prescribed that the offering should not be taxed by the ordinary for more than 100 scudi, nor for less than 50 scudi. And in the Tridentine Council, the offering of the parish priests is

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not properly defined; but only it is forbidden that the parish priests be burdened with pensions that exceed the sum of 100 ducats. Therefore, the amount that the offering of the parish priests should be is not defined; but only the law requires that it be certain and sufficient, as is generally held by the Rota, as can be seen in part O, decisions 230, number 2, *Recent*, and in DD. apud Ferrarist, *Congrua*, article 2.

[*Latin ed. p. 186*]

186 SQUILLACEN". And it is demonstrated that the proposed arrangement is suitable, as is proven by the aforementioned municipal resolution, in which it is stated that the municipality, by royal decree, is obligated to pay annually a subsidy of approximately 400 *libellae*, partly for the upkeep [of the church], and partly for the support of the church's pastor. And although the municipal council members take care to allocate this burden to the public administration of the funds for upkeep, nevertheless, it does not seem doubtful that the municipality's contribution will cease, because another [source] will succeed it. Furthermore, it appears that this other arrangement can be deemed sufficiently suitable, as evidenced by this further argument. Indeed, although the subsidy that is currently granted is not increased, nevertheless, since the church's pastor has lived and still lives from it, it is undoubtedly possible for the parish to also live from it. Moreover, it is to be hoped that, with the establishment of the parish, the economic condition of the church and its pastor will be improved. With all of the above considered, the purpose was to clarify whether there is a place suitable for the canonical erection of a parish in this case. RESOLUTION. The Sacred Congregation of Councils, having been informed on May 19, 1888, decided to respond: Affirmative, having heard the chapter and with the consent of the pastor, a suitable location has been established, within three years. (1) AGRIGENTO: Regarding the sale. On May 19, 1888. Through summary petitions. SUMMARY OF THE FACTS. The Brothers of Bona from Caltabellotta, of the Agrigento diocese, had requested from the S. C. C. the permission to purchase... (1) *Recole*, Vol. I, 520, and 543; Vol. III, 398; Vol. XI, 287; Vol. XIII, 60, and 293. On page 299 of this Vol. XIII, there is Appendix VI, concerning the power of Ordinaries, and the jurisprudence regarding the division of parishes. *Recole* also Vol. XVIII, 315. The cited passages excuse us from adding anything further in the present case.

[*Latin ed. p. 187*]

In AGRIGENTO, a certain debtor, named Platania, held a property belonging to the monastery of the nuns of Saint Mary of Itria. This property, extending 31 hectares, had been initially granted to Platania under an emphyteusis agreement, with an annual payment of 449 *libellae*. He subsequently redeemed it outright for the sum of 8,742 *libellae*.

After making requests to the Bishop to express his opinion in this matter,

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the nuns heard that the brothers [of the order] were considering entering into a purchase agreement with Platania, in order that they might not lose the property, and perhaps even their credit; for Platania intended to transfer the property to other buyers. For this reason, the brothers petitioned the Bishop for an absolution from this illicit purchase.

In response, the Bishop stated that, according to the assessment of the vicarious, the real value of the property amounted to 17,400 *libellae*, and that the property was free from any encumbrances. He further stated that the original purchaser, Platania, who held the position of fiscal official, had received and retained the property without any prior permission, and had never paid anything to the nuns in compensation, although he had purchased the property for a price considerably lower, that is, almost half the price. The nuns, however, had not been consulted, nor was it advisable to consult them, since they were few in number, and would certainly not consent, believing that the alienation of the property would likely lead to its return to them, in which case they would deny their consent.

As for the brothers, the Bishop stated that they were willing, as good Catholics, to accept any decision of the Apostolic See, with no exceptions; that is, they were prepared to pay whatever the original purchaser was obligated to pay. And in another letter, he added that, although these petitioners had acquired the property for its real value and had not made any profit, they were nevertheless prepared to pay, by way of a composition agreement in favor of the monastery, 25 *libellae* for each 100 *libellae* that Platania had paid when he redeemed the property.

[*Latin ed. p. 188*]

188 AGRIGENTO. Disputatio Synoptica. Notum est quod 25 partes per centum in 8,700 libris, ad cuius pretium fundum Platania a fisco redemit, sunt circa 2,200 libras; quae summa est, certe, spectabilis, si praesertim attendatur quod eadem dicitur offerri titulo compositionis, quoniam absque lucro et ex iusto pretio fundum oratores emerunt. Quo stante, criminosae spoliationis monialium reum prae primis erit gubernium, quod bona occupavit, et deinde primus ille emptor Platania, qui bona monasterii dimidio pretio emit, et nihil ecclesiae restituit. Oratores autem, licet sub aliquo respectu excusationem mereantur, coarguendi unice erunt, quia, absque praevia licentia, bona illa retinuerunt, et ideo subsequenter et quasi indirecte ad spolium participaverunt. Porro ad hanc culpam purgandam sufficiens videtur, quam faciunt, oblatio. Vicissim vero considerari oportet, fratres, Bona non ex posuisse quonam praecise pretio praedium a Platania consequuti sint: et licet dixerint id contigisse absque lucro et ex iusto pretio, attamen huiusmodi expressiones rigorosae non sunt, et possunt lato loquendi modo esse prolatas, et deceptionem celare. Grave etiam est quod moniales non fuerunt auditae. Quibus praenotatis, quaesitum fuit quid esset precibus respondendum. RESOLUTIO. Sacra Congregatio, re cognita

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sub die 19 Maii 1888, censuit respondere: Persoluta proposita stemma, caute et utiliter investiendà favore monialium, pro gratia absolutionis a censuris etc. ad cautelam; nec non sanationis enunciatae venditionis, monito venditore, ut consulat conscientiae suae; facto verbo cum SS.mm.

[*Latin ed. p. 189*]

189. DISPENSATION REGARDING THE MASS FOR THE PEOPLE. April 28, 1888. By summary petition. SUMMARY OF THE MATTER. In the year 1883, with the consent of the Bishop and chapter, it was decreed and approved by the Sacred Congregation, that a certain sum, which the municipality of Fodiano paid annually for the cathedral parson, under the name of "supplement of due," should be diverted and assigned to the benefit of a new parish being established in the city; conversely, the care of the cathedral parish, formerly separated from the first dignity of the chapter, should be united to a simple canonry, which would be the first to become vacant, and the person holding that canonry should exercise the care solely through his own provision and with uncertain means. It should be noted that all the canonries of this cathedral are equal and amount to 1020 *libellae*; whereas the cathedral parish numbers 10,000 souls. Furthermore, at the time when the agreement of 1883 was requested, there was no simple canonry vacant; therefore, with the consent of the canons and the Bishop, it was agreed that the care should be provisionally entrusted to someone who would accept it; and this was the canon penitentiary of Altamura, who has exercised the ministry of souls from that day to the present. The chapter and the Bishop also convened the person in the position of canon penitentiary, as they say, so that there would not be more who would have the right and duty to leave the choir. However, in these last months, the canon of Altamura has requested a dispensation from the Mass for the people. SYNOPTIC DISCUSSION. PRAYERS TO BE HEARD. The reasons which the canon presents for this are that the parochial revenues, restricted to the uncertain means of the vestments, are meager, although the parish is numerous; and conversely, he must maintain two assistants, one of whom receives from the municipality only seventeen monthly *libellae*.

[*Latin ed. p. 190*]

Furthermore, the priest is obligated to attend the conventual Mass; therefore, it appears that, having undertaken the ministry of pastoral care, he has experienced more labor and difficulties, and has obtained no benefit, but rather a burden. However, no one's office should be detrimental. And it is not to be doubted that, in particular cases and circumstances, some remission of this obligation may be granted to the parish priests, as is recorded in Spire on February 18, 1865, by the aforementioned decree. Especially if the wish of the Bishop and Chapter is added, as if in a petition. For the Bishop

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rightly says that the burden of offering the Mass for the people, for all those present, should not be onerous; but the Chapter further believes that this dispensation should be granted even perpetually; which, however, the Ordinary does not allow, because when a parochial canonry is established, whoever undertakes it, even though burdened with this obligation, will be excluded from being moved to complain about it.

REPLIES TO BE GIVEN ARE SEEN. But, on the other hand, the law of offering the Mass for the people is urged, "since the divine precept commands all those to whom the care of souls has been entrusted to acknowledge their flocks, and to offer sacrifice for them, etc." (Council of Trent, Session 23, Chapter 1, on Reform). This law was explained and confirmed by the Most Holy Popes Benedict XIV in the Constitution *Cum semper oblatas*, dated August 19, 1744, and by Pius IX in the Constitution *Cum amantissimi Redemptoris*, dated May 3, 1858, and is observed everywhere; and it cannot be violated, except for a very serious reason, or dispensed with.

Considering these things, the question arose as to what should be answered to the petitioners.

RESOLUTION. After deliberation, the Sacred Congregation decided on April 28, 1888, to respond: "A dispensation may be granted for the suppression of Masses on holy days only, until another provision is made for the benefit of the parish."

[*Latin ed. p. 191*]

191 FROM THE HOLY CONGREGATION OF INDULGENCES OF SEBENICO, Concerning the Indulgences Attached to the Recitation of the Little Office of the Blessed Virgin Mary. After the Most Holy Lord Pope Leo XIII, by Decree of the City and the World, through this Holy Congregation, which is entrusted with Indulgences and Sacred Relics, issued a decree on November 17, 1887, to foster a more fervent piety and devotion to the Blessed Virgin among the Christian people, in addition to those already granted by Saint Pius V, He has granted Indulgences to the faithful who recite the Little Office of the Blessed Virgin, as it is found in the Roman Breviary recognized and approved by the same Saint Pius V. To this Holy Congregation, the following questions were proposed for clarification: I. Do the faithful who recite the Little Office of the Blessed Virgin, which is strictly speaking a liturgical prayer, in any vernacular language, even with the approval of the ordinaries, gain the Indulgences granted by the Supreme Pontiffs for the recitation of the same Little Office, as it seems to be indicated by several decrees of the Holy Congregation of Indulgences, and especially that issued on April 30, 1852, and on December 29, 1864? And, if the answer is negative: II. Would it be advisable to extend these aforementioned Indulgences also to the recitation of the same Little Office in any vernacular language? Furthermore, the Holy Congregation, after

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mature deliberation, and having heard the opinion of one of the consultors, decided to respond as follows: Negatively to both. Given in Rome, from the Secretariat of the same Holy Congregation, on September 13, 1888. SERAPHINUS L. S. CARD. VANNUTELLI, Prefect. ALEXANDER, Bishop of Oenensis, Secretary.

[*Latin ed. p. 192*]

192 OF DOUBTS Concerning the prescribed act of prayer, directed towards the intention of the Supreme Pontiff, for gaining Indulgences. Since, among the pious works prescribed for gaining Indulgences, a prayer is almost always enjoined, to be offered with the mind or intention of the Supreme Pontiff, the solution to the following doubts is humbly requested by this Holy Congregation of Indulgences and Sacred Relics:

I. When, for gaining Indulgences, whether plenary or partial, it is prescribed to pray according to the mind or intention of the Supreme Pontiff, is it sufficient, as some teach, to pray mentally? And to this, negatively.

II. Is the opinion to be rejected, which teaches that the most devout recitation of even one "Our Father" and "Hail Mary" with the "Glory be to the Father" is sufficient to fulfill the condition of praying for the intention of the Supreme Pontiff, or rather, is the opinion of those who require the recitation of five "Our Fathers" and "Hail Marys," or equivalent prayers, to be admitted?

To these doubts, the Holy Congregation responded:

To I. – It is indeed praiseworthy to pray mentally, but to mental prayer, some vocal prayer should always be added.

To II. – Let a Decree be given in Saint-Brieuc on May 29, 1841, concerning doubt III, (1). Given in Rome from the Secretariat of the same Holy Congregation on September 13, 1881.

SERAPHINUS CARD. VANNUTELLI, Prefect.

S. ALEXANDER, Bishop of Oenensis, Secretary.

(1) Saint-Brieuc, May 29, 1841. Doubt III. Are five "Our Fathers" and "Hail Marys," which are commonly recited to fulfill the intention of the Supreme Pontiff, sufficient, when it is prescribed that the church or altar be visited, and prayers be offered there, as, for example, is prescribed for gaining a plenary Indulgence by the association of the Work of the Propagation of the Faith?

Response to III. The prayers required in the granting of Indulgences to fulfill the intention of the Supreme Pontiff, are at the discretion of each faithful person, unless they are particularly assigned.

[*Latin ed. p. 193*]

193 BY PAPAL BULL, the Most Holy Pope Leo XIII established new laws for the organization of the Vatican Library and the offices of those who

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preside over or serve it. It seemed most fitting that the Roman Pontiffs, in fulfilling their most sacred office, should, as much as possible, gather together literary monuments, in which the courses of various disciplines are described, and from which the wisdom of past times and the evidence of manifold learning might be drawn, as from a perennial source. Therefore, our predecessors, with opportune and most provident care, took steps to prepare the Library within the very buildings of the Vatican and the Apostolic See, and to enrich it with a great collection of volumes from all disciplines, with great diligence and considerable expense. With the same purpose, namely, that greater benefits might be derived from such a collection of books for the good of the Church, We, from the very beginning of Our pontificate, have devoted Our thoughts and efforts to the Vatican Library. And since We were aware that Our predecessors of illustrious memory, namely, Pius IX, Clement XIII, Benedict XIV, Clement XI, and Benedict XII, had enacted many statutes for its protection and embellishment, We took care to preserve them; and by Our Papal Bull, promulgated on the fifth of September, in the year 1878, We prescribed rules by which its custody and embellishment might be more fully promoted, by increasing the number of offices and providing easier access for those eager for knowledge, so that it might be more readily visited and celebrated. Nevertheless, a greater desire arose in Our mind to accomplish something that would be an honor to the Church, to the benefit and advancement of sound doctrine; for it was not unknown to Us that in our time, many men, inflamed by a passion for study, are devoted to historical investigations, and to exploring the intimate causes of events; and that this pursuit is abused by the enemies of religion, so that they may attack the light of history, and contaminate it with falsehood, adding false narratives to the faith, and finally, by spreading insidious calumnies, they bring into contempt and disgrace men of all merit, deserving of the praise of posterity. Truly, there is nothing more suitable and effective for overturning these deceptions than the truth of facts, placed in the open, and confirmed by irrefutable literary and artistic monuments. Since a vast collection of these is available in the Vatican Library, We rightly judged that from it a clearer light and a firmer defense could be obtained to protect the Catholic cause, to refute errors, and to instruct more widely. *Acta, Vol. XXL, p. 44.*

[*Latin ed. p. 194*]

194. Letters are provided to all departments and offices, so that nothing may be lacking or improperly arranged therein, and great opportunities are offered to learned individuals, so that the exploration of this kind of treasury may be made easier. Therefore, having this in mind, we have established new laws concerning the organization of the Library, and concerning the duties of those who preside over it or minister to it, and we have ordered that these, included in Our Motu Proprio Constitution issued on the 20th

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of April in the year 1885, be observed for a trial period. Indeed, after more than three years, experience has shown that many of them have proven beneficial, and some have suggested changes. Having thus made the necessary corrections, we confirm and sanction the aforementioned laws with Our Pontifical authority, and we command that they have the force of law perpetually, from the very day these Letters are published. Furthermore, we decree and expressly declare that these present Letters shall always exist, be valid, and be effective, and shall have their full and complete effect, even if they have not been exhibited, or received in the records of the Camera, or of the Apostolic Office, notwithstanding the Constitution of Pius IV concerning matters not to be registered, and any other contrary provisions whatsoever. Moreover, we order that three copies of these Letters be made, of which one we command to be kept in the Abbreviated Archive of Our Curia, another in the archives of the Prefectural House of the Vatican, and a third in the special Grammatophylacium of the Vatican Library. We entrust the Library to the Cardinal of the Holy Roman Church, and we command all those who perform duties in the Vatican Library to faithfully observe the aforementioned laws in their respective roles, and to diligently ensure that they are observed. Furthermore, We reserve solely to Ourselves and to Our Successors, for the time being, the special and direct power to amend or repeal these laws, if circumstances or the course of events should require it; and also the power to resolve all doubts and difficulties that may arise concerning their meaning or application, as they are adapted to actual circumstances. Given at Rome, at St. Peter's, on the 1st of October, in the eleventh year of Our Pontificate. LEO P. P. XIII.

[*Latin ed. p. 195*]

195 Letters from the Most Holy Pope Leo XIII to the Most Eminent Cardinal Lavigerie, Archbishop of Carthage and Algiers, in which he assigns to him Italian silver coins amounting to a thousand talents, to be used in the effort to abolish the servitude of the Africans.

LEO XIII. Beloved Son, health and Apostolic Benediction. We have entrusted to you a great and arduous task, driven by our urgent charity: namely, to do everything within your power, with unwavering determination, to put an end to the servitude of so many wretched people in Africa.

— You have so readily accepted this, as is evident, revealing the noble spirit you possess when the welfare of people is at stake. Now, from your letters, we understand that you are becoming even more eager and zealous in this matter, to the point that you seem not only to accept the greatest efforts for this cause, but even to desire and demand them; therefore, we cannot, and indeed we ought not, refrain from expressing in these letters our profound admiration for your efforts, in which you have shown yourself to be diligent in commending worthy bishops, and we know and rejoice

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in this. Furthermore, we pray and hope for the outcome that is fitting for such a noble and good cause.

— The beginnings are indeed encouraging, if it pleases God, regarding the rest. The highest Princes of Europe have agreed, as they promised in the Berlin Assembly of 1878, to act more vigorously against this great evil.

— Among private individuals, we see that many have been moved by your letters and words, and this, as your letter confirms, is not only among your generous citizens, but also among the Belgians, who are naturally prepared to alleviate the misfortunes of others, and among the British, who have long and greatly deserved recognition for their efforts on behalf of the Ethiopians, and among Catholics in Germany, whose piety, as well as that of the Portuguese, is so great that we rightly expect nothing less from them.

— We are equally confident that the Italians and the Spanish will also be supporters of this work and will lend their aid. If the knowledge of the most abominable and terrible nature of the servitude of the Africans has continuously inflamed the minds of people, and if it has spurred them to seek remedies with great zeal, inspired by the feelings of Christian charity and humanity, we rightly infer that, just as you have obtained so much approval and grace from Europe thus far, so too will you achieve even greater success.

[*Latin ed. p. 196*]

196 Letters of generosity will be granted to you henceforth—and therefore, we do not urge you, for so active a virtue does not require urging, but rather we congratulate you, that you may persevere with this spirit and constancy, under the guidance of God, in pursuing what you have begun. Certainly, nowhere have you placed your episcopal charity more usefully, nor have you deserved, by any means, to merit better of the Christian name. For it is sanctioned by the same law for all men, both by Christian and by natural law, that freedom exists: and those who accuse the Church of having, at any time, been complicit in slavery, or of not having sufficiently labored to abolish it, neither demonstrate their gratitude, nor their knowledge of affairs, when history clearly speaks of what the apostolic man accomplished in Africa itself, and what the Supreme Pontiffs have accomplished from the City of Rome, the head of the Catholic world. But you, do not doubt that we will assist your endeavors and industry in every way in which we can. As a pledge of our will, receive Italian silver coins amounting to three hundred thousand. This sum we freely grant to you, that you may suitably provide for the needs of the institutions established in colleges or communities for the abolition of slavery among the Africans. Indeed, nothing could be more pleasing to us than to offer aid to those so inhumanly afflicted: and that the Catholic people, from all nations, of whom your generosity, especially this year, has been so remarkable, may know that the fruits of your munificence are also being applied here, namely, to repel such immense injustices, and

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to defend the dignity of the human person in so many of our brothers. — Be of good heart, beloved Son, and place your hope in the Father and Protector of all mankind, God: and under the auspices of His gifts, and as a witness of our paternal benevolence, we impart to you and to your entire clergy and people our apostolic blessing, most earnestly in the Lord. Given in Rome, at St. Peter's, on the 27th of October, in the eleventh year of Our Pontificate. LEO XIII.

[*Latin ed. p. 197*]

197 FROM THE HOLY CONGREGATION OF THE COUNCIL OF MELE, NOTHING SHALL PASS WHICH CONCERNS THE COLLATION. May 19, 1888. Session 21, chapter 3, concerning Reforms. SUMMARY OF THE FACTS. By a decree of November 22, 1886, the apostolic administrator of Mele appointed a certain cleric, Francis Galea, as the administrator of the benefice founded by John Charles Carbum, which had been vacant since 1835, for the purpose of discovering the patrimony of said benefice, which was alleged to be lost. However, unaware that he was dealing with the same benefice, on November 26 of the same year, he also granted to a priest, Paul Micaleff, the same office, who, in his petition, omitted the name of the founder and instead used the name of the benefice, "ta Cola" or "tas Hemmes," which the cleric Galea had also concealed. The purpose of both in requesting the appointment as administrator was to be able to investigate the endowment of the benefice and to obtain the letters of commendation from the Ordinary at the Holy See, to which the collation had been devolved. Meanwhile, the episcopal chancellor, wishing to write letters for the collation of the benefice to the Apostolic Datary, noticed that the name of the benefice and other details were missing from the petition of the cleric Galea, and he informed him of this, and at that time, he understood that it was the same benefice, "ta Cola" or "tas Hemmes." After the facts were presented to the administrator, he, considering several things, ordered that the letters of commendation be drawn up in favor of Francis Galea. However, the priest Micaleff presented nothing to the Apostolic Datary against the appointment of the cleric Galea. Nevertheless, after hearing the Bishop, the Em. Prodatarius ordered that nothing should pass concerning the cleric Galea, and that the bulls should be issued, by which the aforementioned benefice was conferred upon the cleric Galea. And this was done on March 23, 1887.

[*Latin ed. p. 198*]

198. MELEVITANA. The priest Micaleff received this news with great distress, and he appealed to the Sacred Congregation of the Council, seeking that the matter be settled legally. At that time, the granting of possession of the benefice was temporarily suspended, and the necessary expenses were incurred to pursue his rights. The case was then proposed for

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discussion in a synodal assembly.

SYNOPTIC ACCOUNT. RIGHTS OF PRIEST MICALEFF. Here, he argues that he has a right to obtain such a benefice, or at least that it should be granted to him based on equity. He states that he, and no one else, discovered the assets of the benefice of Cola or Hemmes, which had been lost for many years. However, if the cleric Galea had made his requests to the Bishop earlier, it is only because the priest Micaleff was betrayed by a certain Francisco Xaverio Saré, whom he had hired as an associate to conduct investigations, unaware that he was also performing the same duties for another at the same time. For when Saré learned that priest Micaleff had discovered the assets of the benefice, he informed the cleric Galea, who immediately sought to be appointed as the administrator by the Bishop. Several depositions were presented before a public notary to prove these facts. In the first of these, Francisco Xaverio Saré declared before witnesses that he had been unable to find anything about the assets of the benefice, and that everything had been accomplished by Micaleff. In the other two, the story of the discovery is recounted in such a way that it seems impossible that priest Micaleff was preceded by another. Therefore, he concludes, it should be considered that he is the one who deserves to have the lost assets and the benefice restored to the Church. Consequently, he should be regarded as the new founder of the benefice, and therefore, if not strictly according to the law, at least according to equity, he should be preferred in its acquisition. For this reason, he maintains that if the highest prelate had known all of this, he would have been more likely to grant favor to the cleric Galea. Moreover, it is reported that the cleric Galea was the one who discovered the lost endowment of the benefice of Cola or Hemmes, which, as is well known...

[*Latin ed. p. 199*]

It appears from the aforementioned statements that there is not only a lack of conformity with the truth, but also that Galea, in the petitions presented to the Bishop, could not indicate the name of the benefice and other details. Nor is it true that the Apostolic Dataria wrote to the Bishop of Malta, stating that the priest Micaleff, besides the benefices of Ta Fula and Ta Gliallis in Malta, and the income of 2,94 livres, had obtained, or could easily obtain, three other benefices on the island of Gozo, namely, Ta Canna, lias-et-Bajada, and B Galen ta Xiara. Indeed, testimony is presented from the Vicar General of Gozo, who expressly states that the priest Micaleff does not possess the benefice of Ta Canna, nor the benefice of Meida-ta Ras-et-Bajada; and that while he had indeed obtained apostolic bulls for the benefice of B Galen ta Xiara, he was unable to come into possession of it, because a certain cause arose in the civil court. As for the benefice of Ta Fula, a witness states that from its own income, 54 livres are due for the expenses of six masses and taxes. Finally, the benefice of Ta Gliallis has not yet

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been possessed, since it has not yet been fully recovered; but moreover, the income of this benefice consists of a census of three Maltese scudi, which are equivalent to seven and a half livres, as can be seen in the foundation documents which were presented. Since all of these things greatly alter the state of affairs, it can now be doubted whether, if the Supreme Pontiff had known all of this, he would have granted the benefice to the cleric Galea. Indeed, the assertion that the priest Micaleff possessed five benefices could have been the motivating cause for denying the benefice of Ta Cola, or tes Hemmes, to him. Certainly, the Doctors teach that a grace can be declared invalid due to deception and fraud, as can be seen in Pitonium, disp. 27, and elsewhere. De Luca, De regat. disp. 4; De regular, disp. 6; Misceli, disp. 4, no. 10. It is not necessary to insist on the fact that the Apostolic Dataria, in its decree, did not go beyond what was requested, for it is well known that the Dataria is a court of grace rather than a contentious court, as De Luca says in Relat. Rom. Cur. disp. 9.

[*Latin ed. p. 200*]

200 MELEVITANA n. And therefore, his decision cannot be considered a valid legal norm. JURA CLERICI GALEA. However, it is requested that the possession of the benefice not be further delayed for the cleric Galea; for, viewed from any perspective, no right to the benefice appears to belong to the priest Micaleff. Indeed, the cleric Galea was the first to present his petition to the court, and, as the Bishop writes, this occurred on November 12th, at which time he was residing in the countryside, as clearly indicated by the correction appended to said petition. Furthermore, all that Paul Micaleff presents to demonstrate his priority does not, in any way, invalidate the aforementioned facts. Moreover, there is the sworn deposition of Francis Xavier Harè, who, while inquiring about the dowry of the benefice in Cola together with Micaleff, learned from the tenant of those properties that a certain cleric had previously come there for the same purpose, and the deposition of the tenant himself is lacking, who confirms the same. Furthermore, the fact that Micaleff recounts concerning Francis Xavier Sarò is contradicted by the testimony of Paul Busuttil, who stated that he, at the mandate of the aforementioned cleric Galea, conducted investigations regarding the benefice and discovered the dowry. Therefore, it appears that the claim of the other party is not at all substantiated, and that there is a place for the principle that "first in time, first in right," as the Ordinary, the Most Reverend Pro-Datary, indicated. Regarding the objections raised against the priest Micaleff, it is appropriate to note what the Bishop reports: he stated that the priest was a "hunter of benefices." Furthermore, it is established that the priest Micaleff, in addition to the patrimony of his family, holds two benefices in this diocese, and in the neighboring diocese of Gaudiese, he is a registered economic administrator of another benefice, responsible for discovering assets, constituting the dowry, so that he may ul-

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timately be able to establish himself in the same. Regarding other benefices, the Prelate states that, due to a lack of time, he has not been able to clearly elucidate the matter, but he believes that what he has presented is sufficient to reveal the character of the priest Micaleff. With these matters established, there is no need for proof of the deceit and trickery in this case, since it is a reprehensible act, which should only be admitted for a very serious reason; De Luca, Benedictine, Disciplinary Canons, book 8, number 7; De Beneficiis, book 42; De Testibus, book 1, element 1.

[*Latin ed. p. 201*]

MELEVITANI 201. Furthermore, setting aside all other matters, the reason for which the Bishop considered it fitting to prefer the cleric from Clairac, was not solely derived from the priority of the offered petitions. For, knowing the cleric from Clairac to be endowed with good morals, being almost twenty years of age, and yet, being poor, lacking the sufficient means for his ordination, he considered it fitting to prefer him in the granting of the benefice, even for the good of the diocese itself. Having briefly related these matters, the purpose was to clarify the doubt concerning whether the place was suitable for the assignment of the cleric from Clairac to the possession of the benefice in this case.

RESOLUTION. The Sacred Council, having knowledge of the matter on May 19, 1888, decided to respond: "Affirmatively, and moreover."

APUANA, CONCERNING FUNERALS. On May 19, 1888. Session 25, chapter 13, concerning reforms.

SUMMARY OF THE CASE. In Apua, in the parish district of St. Nicholas, there is a hospital dedicated to St. Anthony the Abbot, established in the year 1636, where the sick are received from the entire town, that is, from all five parishes of the city indistinctly. In the hospital, there is a chapel, where the Most Holy Sacrament is reserved, according to the permission granted by the Ordinary of Sarzana in the year 1741. There is also a baptismal font in the chapel, constructed with the consent of the parish priest of St. Nicholas in the year 1868, so that it might be possible to diligently attend to infants exposed or born there. And the chaplains who serve God there administer baptism to children and the sacraments to the sick without controversy. But who has the right to bury the deceased, and also who has, up to now, actually cared for them, is disputed between the parties.

[*Latin ed. p. 202*]

202 In APUANA, there is a parish priest of St. Nicholas who insists that all funerals of the deceased in the hospital, regardless of which parish they belonged to, should be attended by him. Meanwhile, the parish priest of the cathedral wishes that his daughter, who is being received into a religious community, should not be buried by anyone other than himself, as the proper parish priest. The origin of this dispute dates back to the year 1885,

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and arose from the funeral of a certain Bertocchi, the cathedral's daughter, whom the Confraternity of the Most Holy Sacrament wished to have brought from the hospital, with the cathedral's own parish priest claiming the right, even though the parish priest of St. Nicholas was present.

A Synopsis of the Dispute:

IT WAS ESTABLISHED BY LAW: The hospital chaplain is not involved in the present case, nor can he be in any way. Since the hospital is not exempt, and the concession granted to the priests who are curators of the infirmary and the chapel with the Most Holy Sacrament in the year 1747 was made "with the declaration that this ministry should always be performed by the aforementioned chaplain, in the name of the aforementioned rector, St. Nicholas, and as if by his substitute... so that it should never be understood that this prescription was introduced, since all these acts should be considered as if they had been performed by the aforementioned rector, through the agency and means of the same chaplain."

Furthermore, the baptismal font was erected with the express clause that, henceforth, parochial rights should remain intact. Therefore, since the chaplain, as the vicar of the parish priest of St. Nicholas, is considered and has a specific authority, he cannot extend that authority beyond what is granted to him, and much less can he act in contradiction to or to the exclusion of the parish priest whose place he holds. For the faculty and jurisdiction, being specific to a certain type of case, cannot be extended to another; because a specific grant has the force of exclusion, according to Menochius, book on precedents, 18, paragraph 13.

Moreover, according to common law, rectors are not excluded from celebrating funerals with solemn processions through the oppidum. In confirmation of this assertion, the Sacred Rota, in decree 348, part 11, recent, states: "Rectors of said hospitals, with stole and cope..."

[*Latin ed. p. 203*]

APUANA: Twenty pounds cannot be collected for corpses which are buried in other churches; because the directors of said hospital are not properly and truly parish priests, nor does the right of the parish belong to the hospital... Nor is the right of the parish concluded from the fact that the sacraments are administered in the hospital, or that there is a right of burial therein; since all these things may belong by prescription or privilege... From these things, the association was denied to the aforementioned hospital and to the directors as parish priests outside of its jurisdiction.

Similarly, the Sacred Congregation of Visitation, on December 16, 1699, in response to a question concerning whether it is permissible for ministers of the Consolation of the City to associate corpses destined for burial elsewhere with a cross and to prevent the parish priest from approaching the door of the hospital for them, answered: "No." Furthermore, omitting

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other matters, the Sacred Congregation of the Council of Bologna, in the law concerning the leading of a funeral procession on January 26, 1756, and again on January 24, 1857, in response to a question concerning whether the chaplains of the hospital of Saint Mary of Life and Death have the right to solemnly lead funerals to the public cemetery, or rather, whether this pertains to the parish priest, answered: "No to the first part, affirmative to the second part, with the qualification that it does not pertain to the parish priest of the domicile of the deceased." Therefore, having established as is fitting, that the chaplains are concerned, the only matter to be considered is among the parish priests.

RIGHTS OF THE CATHEDRAL PREBENDARY. Furthermore, it seems that the principle that the prebendary of the cathedral does not have absolute power over the parish priest, within whose parish boundaries the hospital is located, to remove and associate with the common cemetery the corpses of foreign parishioners who die in the same hospital, is the primary consideration. This principle descends from the well-established teaching of chapter 3 concerning burials, in which it is stated that "those who, from a city or fortress, sometimes transfer themselves to a rural village for the sake of recreation, or to engage in rural activities, and who die there, must be buried not in the church of that village, but in their own parish." And this is confirmed by numerous authorities, both of the Doctors and of the tribunals. Thus, expressly, the Sacred Rota in decision 348, part 11, number 2; Cardinal De Luca, book 12, De regia, chapter 23, numbers 8 and 9, and De par. disp. 23.

[*Latin ed. p. 204*]

204 APUANA, no. 14; Pignatelli, vol. 4, consultatio 151, no. 7; Reiífenstuel, title 28, "De sepulturis," no. 16; and finally, the Sacred Congregation of Councils, as cited above, as well as in another document from Bologna, dated February 13, 1694: in which, concerning the question of whether the right to associate the bodies of the faithful who are in the aforementioned hospitals, namely, *s. Mariae vitae* and *s. Mariae de morte*, with other churches, pertains privately to the proper parish of the domicile of the aforementioned deceased, it responded: "Affirmative." And the reason is evident; for those who are received into the hospital, they come there for the purpose of curing their health; therefore, they do not lose their proper parish, and therefore, if they can be conveniently transferred to their own church, this should certainly be done. It does not impede that the parish priest, in order to carry out and associate the bodies of his deceased, must enter and pass through another parish, carrying a raised cross. For to him to whom it is permitted to carry a dead body, it is permitted to enter his house, even without the permission of the parish priest of that place, according to Benedict XIV, note 105, no. 48-50, and thus to pass through another parish or diocese with a stole and a cross, according to the express and general

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decree of the Sacred Congregation of Councils, confirmed by Innocent XI on December 11, 1676, in Ferraris, vol. 2, *Parochus*, §3, no. 40. Therefore, considering only the common law, there seems to be no doubt that the intention of the prelate of the cathedral parish is justified. For he contends that he can access the hospital, remove the bodies of his deceased, and bring them to his own parish; and since the hospital is not exempt, it seems certain, considering the common law, that this can be done. And even more so if one considers the custom that the parish priest observes for his own benefit, which he can prove with witnesses, and especially the authority of the president of the same pious house, who, having been born 86 years ago, presided over the same hospital for 41 years. To this are added the testimonies of several other venerable men, namely, Canon Caimi, almost seventy years old, and the priest Pellicia, sixty-six years old, and...

[*Latin ed. p. 205*]

APUANA 208: The sacristans, both forty years of age, and finally Ridotti Risoli, a man of eighty-four years, who had been devoted to the service of the same cathedral for thirty years or more; all of whom were questioned before a public notary and confirmed the custom. The Bishop, when asked, stated that he had examined the records of the mortuary in the Hospital from the year 1636 to the year 1814, and that he had not found any mention of an association of bodies with the burial, and that the records were signed by the chaplain, not by the parish priest. Furthermore, he stated that after the establishment of cemeteries, there is not even a word about an association with the cemetery, but, after the private funeral rites have been completed, the burial was made, and this is recorded. Moreover, it must be admitted that the poor deceased are even now transported at night from the hospital to the burial without any priest accompanying them, but by four gravediggers. Therefore, the Bishop said, it is my opinion that any parish priest, if he wishes, should have the right to take his own parishioners from the Hospital, and to accompany them to the burial, at least with the necessary vestments, according to the Roman Ritual, so that the deceased family may not have to bear the expenses of the funeral.

THE RIGHTS OF THE PARISH PRIEST OF SAINT NICHOLAS. But, on the other hand, the parish priest of Saint Nicholas puts forward several arguments in his own defense, although some of them can be readily refuted. In particular, these are the arguments he puts forward concerning the disputes that arose in the funeral from which the present controversy arose; and also the arguments he puts forward concerning the right of the parish priest to bury all those who die within the limits of his territory. Nor do the arguments he puts forward concerning the construction of the baptismal font in the hospital chapel, the reservation of the Most Holy Eucharist, the sacred oils, and the registration of births and deaths in the hospital seem to have much weight; all of which seem to be of little consequence. But

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where the parish priest of Saint Nicholas most strongly and validly bases his argument is in a document, which, although not formally legitimized by the ecclesiastical court, appears to be true, since it is written and signed by a public notary, taken from the archives. In this document, a certain agreement is described, initiated by the parish priests of Apuana, several years ago.

[*Latin ed. p. 206*]

206 In APUANA, before the erection of the hospice, which was established to avoid disputes, it was determined that the deceased, who died from illness in any of the parish districts, should be buried by the parish priest of that locality, even if the deceased was not a member of that parish, provided that the deceased had sought medical care in that district and died there from illness, and not from another violent cause. I quote the words of the Instrument: "In the year of Our Lord 1632, on the 12th of March, because it has been observed that there are often disputes and disagreements, especially among those who should be most harmonious and holy, due to matters concerning the burial of the bodies of the faithful, which cause great harm to souls, hence the undersigned and most Reverend Parish Priests of the town of Pontremoli, etc., wishing to remedy this evil, appeared in person before me, the Notary, and the undersigned witnesses, and confessed that they had come to the following transaction, agreement, conventions, and accords, namely: 'I. That in the future, whenever it should happen that any parishioner, from their respective parishes, should die outside their own parish, in any of the aforementioned parishes, even if they went there for medical treatment or for any other reason, it shall be understood that the funeral expenses are to be paid by the rector of the parish in which they died, and not by the rector to whom they would be legally obligated if they had not gone there. 'II. Also, whenever it should happen, may God never permit it, that anyone is killed by enemies or by some accident outside the parish in which they were then living, then half of the funeral expenses shall then be due to the rector of the parish where they were living.' Furthermore, a transaction concluded between ecclesiastical persons, especially if it concerns a small profit from tithes or funerals, and if it is undertaken to eliminate disputes and scandals, is binding on their successors in office, even if it was made with the consent of the Bishop, as is taught by De Luca, *De alienât*, Disp. 1, n. 141, and De cred., Disp. 138, n. 4."

[*Latin ed. p. 207*]

APUANA, 207. And this is especially so if the same custom has been observed for more than thirty years; for in this case, an apostolic decree is presumed. The same is found in De Luca, *De Caii*, chapter 17, section 30. However, in this matter, not only has the custom been observed for

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more than thirty years, but for more than two centuries. The same custom is asserted to have been observed by the parish of St. Nicholas. And to bring about the result, more than 26 witnesses are brought forward, whom he declares to be of every age, who testify, either from their own knowledge or from the hearing of others, as follows:

1. That whenever the body of a deceased person was to be brought to the Hospital of St. Anthony, the parish priest of St. Nicholas always carried the body and accompanied it to the cemetery, moving it from his own church of St. Nicholas with the cross and the religious paraphernalia of that church.

2. That no other parish priest has ever been seen or heard to accompany the body of a deceased person from the Hospital to the cemetery.

3. That whenever confraternities were present, they were never absent without the parish priest of St. Nicholas, along with his own cross.

In affirming what is contained under numbers 1 and 2, all the witnesses are entirely unanimous, both in age and in doctrine and probity. For first, there are cited Martius Venturini, aged 81, Archdeacon of the Cathedral Church; Matthew Venturini, aged 75, Dean of the aforementioned Church; John Baptist delle Piane, aged 66, residing in the city of Apuana since the age of 14; Dominic Francesconi, aged 90; Geminianus Albertosi, aged 70; Anthony Armonetti, aged 56, who knows the facts narrated; Cosimus Salvini, aged 82; Dominic Lemacci, aged 70; Aloysia Orioli, who has resided in the Hospital house from her adolescence until the year 1873; Anthony Angella, aged 74; Anthony della Zappa, aged 63, devoted to the pious house for 23 years. Of the aforementioned witnesses, the first three issued declarations in writing, authenticated and preserved in the records; the remaining eight testified before a public notary, having solemnly sworn an oath, of which a public instrument was produced.

[*Latin ed. p. 208*]

208 From Pontremoli, the Sacred Congregation of the Council has received information; and the testimonies of these individuals, as they concluded in another cause, were decided in favor of the parish of Saint Nicholas in the year . . . . To these, the parish priest adds other witnesses, who, having examined them carefully, appear to be very reliable both in truthfulness and in knowledge, and are to be considered with great attention in this particular case. He presents Edward Bondi, who was born in 1813, and resided in the aforementioned town from 1831 to 1835, for the purpose of study, and then from 1836 to 1840 as a teacher in the seminary, from that time until 1845 as secretary to the Bishop, and finally from 1881 until 1884 as rector of the seminary. This important witness further adds that he has always heard that such an association was of exclusive jurisdiction to the parish of Saint Nicholas. The same is confirmed by the priest Castellotti, aged 82, at least with regard to the time he resided in the town of Pontremoli, namely from 1822 to 1829;

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and to him is added another witness, named Bagatta, who lived in the parish of Saint Nicholas for ten years. All of these, with almost the same words, testify to what has been stated above under numbers one and two. These same facts are confirmed by the chaplains of the hospital, who have held such an office from the year 1865 until the present day, namely by Father Augustine from Piacenza from 1865 to 1873, by Joseph Ballotti from 1878 to 1880, and by Aloysius Masetti, the current chaplain. These are further confirmed regarding the first, second, and third points by all the substitute parish priests of the cathedral church, who come under the name of curators, namely by Dominic Andreoni, aged 68, who resided in the town of Pontremoli from 1838 to 1844 for the purpose of study, who held the office of curator from 1851 to 1858, and who, in four authentic letters, testifies that only the parish priest of Saint Nicholas ever came to the Hospital of Saint Anthony; never, for this purpose, did the parish priest of the Cathedral, nor anyone else. The words of this witness, it should be noted, are quoted by the parish priest of Saint Nicholas.

[*Latin ed. p. 209*]

APUANA, 209 souls, because, according to the testimony of the aforementioned, a decree was issued which was not well understood, and the opposing party uses this as an argument to challenge the right of the Church of St. Nicholas. Raphael Veruli, the pastor from 1864 to 1867, testifies to this, as does his immediate successor, Costantinus Micheli, until 1877, as well as Laurentius Maestri, the pastor from 1877 to 1879, and finally, Joseph Fratta. With all of the above considered, the following question was to be resolved: Does the pastor of the cathedral parish have the right to bury his parishioners who die in the hospital of St. Anthony, in this case?

RESOLUTION. After deliberation by the Holy Congregation on May 19, 1888, it was decided to respond: Affirmative, and with the understanding that the Bishop should ensure that the association of the body takes place according to the prescriptions of the Roman Ritual.

FROM WHICH THE FOLLOWING IS DEDUCED:

I. The right to associate the bodies of the faithful who die in hospitals, which are not exempt, belongs to the proper pastor of the domicile of the aforementioned deceased.

II. For those who are received into the hospital, they come there for the sake of treatment and to improve their health; they do not lose their proper pastor in a hospital that is not exempt.

III. Therefore, the pastor can pass through another parish, with a stole and a raised cross, in order to carry and associate the bodies of his deceased.

FIRMANA, regarding the alienation. On May 19, 1888. Through summary petitions.

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COMPENDIUM OF THE CASE. In the year 1866, due to death, the benefits united to St. Michael the Archangel and the Place not located, four families, the patrons named Matteucci, Morrone-Morici, Acta, Vol. XX, page 44.

[*Latin ed. p. 210*]

210 In Fermo, Vinci and De Nobili redeemed the assets of the benefice from the treasury, and divided them among themselves. And since the entire endowment, amounting to 8,918 scudi, was to be distributed to the heirs of the De Nobili family, who are united in this matter, they received a share of assets worth 9,909 scudi, and the right to collect tithes for an annual income of 1,300 scudi. The obligations of the benefice are to offer three Masses each week, two in the urban church of the Filippini, and one in the rural church of Saint Lawrence. Furthermore, the heirs and descendants of the De Nobili family are divided into four families, which are named Brancadoro, Manciforti, Giordani, and Bravi. These families, in the year 1882, decided to sell two properties, totaling 8,245 scudi in value, in order to divide among themselves the share of assets acquired from the endowment. However, one of these families, the Brancadoro family, appealed to the Holy See, requesting permission to sell, and also asking that the profit derived from the sale be used to establish a free residence for a cleric to be named by them, namely Cerquetti. After hearing the case, the Archbishop issued a decree on July 11, 1883, which read as follows: "Considering, etc., while maintaining the obligation of the beneficiaries regarding the profit previously received and the fulfillment of the obligations, for the purpose of selling, and to remove any scandal, the aforementioned properties, however, must be deposited with the Archbishop's court, where they will be carefully appraised and, with the Archbishop's permission, the proceeds will be distributed in the following manner: a fair reduction of Masses, and the future income, after the fulfillment of the obligations, will be allocated to the ecclesiastical education of the cleric Cerquetti. Given from the Archbishop's palace, with the consent of the archbishops, contrary to all." This grant, however, does not in any way release the other patrons, who are strongly advised to consult their own consciences. Meanwhile, in the year 1886, a new petition arrived at the Sacred Congregation from all the heirs of De Nobili, and it was signed by all of them. In it, it was stated that a certain Mancini had been found as a buyer for one of the aforementioned properties, and he offered 6,000...

[*Latin ed. p. 211*]

FIRMANA, on the 2nd, promised to provide the necessary documents. Furthermore, the Brancadoro family indicated that they could proceed with the sale according to the terms of the aforementioned decree; but this time, two other families, namely Giordani and Bravi, from the beginning

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declared that they were prepared to comply with whatever the Apostolic See prescribed; however, they requested an indulgence in paying the price in order to alleviate their poverty. On the other hand, the fourth family, the patrons descended from the De Nobili, that is, the Manciforte family, while being urged to sell, conversely affirmed that nothing could be restored to the Church. Therefore, a decree was issued on March 27, 1887: "As has been requested, let the Archbishop use the faculties of the Sacred Penitentiary with regard to the patrons." But shortly thereafter, the petitioners insisted again, stating among other things: "The civil court has decreed the sale, especially in favor of the minor heirs of Manciforte-Sperelli; from this sale, 25,470 florins would be available to each of the patron families." Immediately, the Brancadoro family noted, as before, that they had already made provisions according to the first decree of the Sacred Congregation of the Council. The curator of the Manciforte marquis requested permission to sell, declaring that he could not disregard the decrees of the civil court, both because of the rigor of the law and because of the economic condition of the Manciforte family. The patrons Giordani and Bravi affirmed that they would derive the least possible benefit from the sale, and that this benefit should therefore be left to them as poor people. Finally, the buyer of the Manciforte property, seeking permission to purchase, stated that he was prepared to make a small contribution in favor of the pious cause. The Ordinary reported that the rectors of the churches, where two benefices had been united, would receive with gratitude whatever was decided by the Sacred Congregation of the Council. Furthermore, the Morrone Morici family, another of the primary patrons, had obtained a settlement according to a decree of the Sacred Congregation of Bishops and Regular Canons. Finally, it was noted that the properties belonging to the descendants of the De Nobili were being offered at a lower price than before, perhaps due to the economic conditions under which the Republic is currently suffering; for the Bishop stated:

[*Latin ed. p. 212*]

212. In Fermo, haec possessio est estimata a viro perito in 741 libris, 641 libris, praeter 34 libros de redemptione, provenienti ex iure decimando. *Disceptatio Synoptica*. In hoc casu, sicut in aliis, accidit quod patroni, qui debent esse defensores beneficii, facti sunt hostes, abuti libertate, consummantes latrocinium fiscale et depraedantes ingentem beneficiorum dotem, negligentes conscientiam, onera beneficii et leges Ecclesiae: usque adhuc fructus sunt vorati, et nunc insuper volunt sortem dividere et conficere. Et quamquam non sit aequaliter distributa culpa et malitia inter omnes, et quidem ii qui recurrunt ad religionem, certo sunt ducti; nihilominus effectus non mutantur. Etenim, praeter parvam quotam, quam familia Brancadoro assignat pro sede gratuita in seminario, reliquum rei ad descendentes de

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Nobili spectanti, fere ex integro disperditur per concessiones de gratia. Vicissim, oportet attendere quod patronis egentibus, subsidia non negantur ex reditibus beneficiorum. In themate autem, tres familiae, Giordani, Bravi et Manciforte, dicunt se laborare per paupertatem, saltem relativam, et Ordinarius hoc non negat. Adest etiam quod agitur de tenui quota. Quod insuper ex ea esset demendum, id quod patroni in redemptione bonorum fisco solverunt, nisi forte ex fructibus hucusque perceptis, sit ipsis satisfactum. Nec potest differri venditio; nam haec videtur decreta a tribunali, favore praesertim pupillorum familiae Manciforte. Unde etiam haec familia nihil potest, saltem in praesentia, restituere; quia tutor rationem de acceptis et expensis reddere civili magistratui debet. Demum, considerationem meretur promissio emptoris, qui ad aliquid liberaliter et de suo tribuendum, est paratus. Unde quae ipse offert, cumulando cum iis quae dat familia Brancadoro, aliisque quae saltem poenitentiae ergo aliis duabus vel tribus familiae possent imponi, videretur causa pia, aliquatenus facta indemnis.

[*Latin ed. p. 213*]

FIRMANA 213 Having stated the foregoing, the question was raised as to how the prayers should be addressed. RESOLUTION. The Holy Congregation, having knowledge of the matter, on May 19, 1888, decided to respond as follows: At the discretion and conscience of the Archbishop; nevertheless, so that, while the disposition of the aforementioned decree regarding the Brancadoro family remains firm, the curator of the Manciforte family shall inform the minor children in writing of the obligation to compensate the pious cause, as soon as they reach the age of majority; and furthermore, that a settlement shall be made with the families of Giordani and Bravi, and with the purchaser, as agreed upon. MANTUA, PRIVILEGES OR RIGHTS, May 16, 1888. Session 23, Chapter 1, Concerning Reforms. SUMMARY OF THE FACTS. In Mantua, not far from the cathedral church, there are two other celebrated basilicas; one dedicated to Saint Barbara, still adorned with countless privileges, and the other dedicated to the Apostle Saint Andrew, concerning which the matter at hand is. This latter was, from the beginning, an abbey of the Benedictines; but Sixtus IV, by apostolic letters dated May 20, 1472, granted to Cardinal Francis Gonzaga that he should suppress the abbey, reduce the monastery to secular status, and in place of the Abbot and monks, establish eight canonries, eight chaplains, four clerics, and especially one dignity of primicerator, who should be superior to the others in that church, and possess more rights, privileges, and authority. However, as time passed, disputes arose more frequently regarding the manner and extent of these rights of the Primicerator; therefore, a particular congregation, composed of Fathers from the Holy Congregation and appointed by the Most Holy [Father], issued a decree on September 28, 1736. - I now present the complete wording of the resolution, so that all

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may...

[*Latin ed. p. 214*]

§ 14. The status of the primicerial rights of MANTUANA should be noted by the Sacred Congregation of Councils, although the matter may be debated in general. Therefore, it was decided as follows: "By virtue of the Bull of Sixtus IV, and other apostolic constitutions, the primicerius does not have the passive jurisdiction over the canons, clergy, and the church of Saint Andrew, nor does he have the active and contentious jurisdiction over said canons, other persons devoted to the service of the same church. However, it should be consulted with the Most Reverend [Bishop] for the granting of active jurisdiction, even contentious, to the same primicerius over all of the aforementioned, provided that it concerns offenses and excesses committed within the confines of said church, or the interests of canons, clergy, and other persons devoted to the service of said church, with regard to the interests of said church, reserving the right of appeal to the Bishop, and with the condition that the primicerius must use the ministers of the Episcopal court and the prisons of the same court in proceedings, and must also obtain express permission from the Bishop whenever it is a matter of enforcing the imprisonment of someone within the city or diocese of Mantua, and in no way may he interfere in matters of immunity of the church, whether personal or local, either by delivering those fleeing to said church to the secular or military authorities, and also with the express declaration and determination that he, together with the canons and clergy of said church, shall be subject to the authority of the Ordinary for the time being, in solemn processions and other matters authorized by the Ordinary, and also that the same primicerius may not grant permission to expose the Most Holy Sacrament of the Eucharist in order to bestow blessings upon the people, except with the permission of the Bishop." "Furthermore, it should be consulted with the Most Reverend that, beyond the use of pontificals granted to the primicerius by the Bull of Sixtus IV, as is customary for abbots, only the use of the precious mitre, the pastoral staff, even without the attached veil, the pectoral cross, the ring, the sandals, and the stole should be granted to him in Masses, and respectively in solemn Vespers in said church on days that are pleasing to him, but not at the same time that the Bishop is present in the cathedral."

[*Latin ed. p. 215*]

"In Mantua, the pontifical offices are performed, and the use of lights, or candelabras, commonly called 'bugias,' is permitted, both in solemn Masses and Vespers, as well as in private Masses, with the faculty of giving the triple blessing in the manner of a bishop. Furthermore, privately, the people may be blessed within said church only, and in the absence of the Bishop; in other churches, only with the permission of the same

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Bishop. Moreover, it is understood that the Bishop retains the right to enter the aforementioned church of Saint Andrew whenever and as often as he wishes, both in procession with his clergy, and privately, and at his discretion, to perform whatever ecclesiastical functions he desires therein. In this case, and also when attending the Bishop's seat and the Primicerius, and when the rites and ceremonies prescribed in the decree concerning the use of pontifical offices, granted by the Sacred Congregation of Rites to subordinate bishops, published under Alexander VII on September 27, 1659, number 15, are to be observed."

"Furthermore, it is to be consulted with the Most Holy [Father] regarding the granting of the faculty to said Primicerius to bless chalices, patens, images, bells, and other sacred furnishings for the use of the aforementioned church of Saint Andrew only, but not to approve of sacred relics, and to protect them with their own sign; to wear sacred vestments at the altar, even in private Masses, but not in the faldstool; to use silver basins and ewers for the washing of hands in the same manner, but not to wear a biretta from the beginning of Mass until the canon without a special Indult from the Holy See; to walk publicly through the city of Mantua wearing a cassock and a violet mantle, but without a rocchetto and mezzetta, and without a pectoral cross."

"It is also to be consulted with the Most Holy [Father] regarding the confirmation of the faculty granted to the Primicerius by the Bull of Sixtus IV concerning the retention of the baptismal font, the collation, provision, presentation, and election of canonries, other benefices established in said church, and also of the churches of Saint Ambrose and Saint Urban of Formigosa, as well as the rights and appurtenances of the ancient monastery of the Order of Saint Benedict included in the same Bull, and also the faculty to establish and suppress [institutions] therein."

[*Latin ed. p. 216*]

"In Mantua, [he is granted] the ninth [part of the tithes], and the benefit of the aforementioned church of Saint Andrew, saving the rights of the bishop, namely, not concerning the visitation by ordinary law of the aforementioned baptismal font, and of all other things existing in said church, and concerning any other matter pertaining to it; moreover, concerning the examination of the persons present by him, in relation to the aforementioned parish, and also concerning the authorization of any institution to be given by him in the same parish." "And finally, consideration should be given to His Holiness for the granting of the faculty to the Primicerius to give testimonial letters to clerics devoted to the service of the church of Saint Andrew, promoted by the Bishop of Mantua, both for the lesser orders, as well as for the higher orders, not granting dismissal letters." Concerning all of these matters, a report was made to His Holiness, who approved everything and ordered that apostolic letters be issued concerning

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them on October 3, 1736. Afterwards, things proceeded peacefully until the end of that already elapsed century; at which time, due to political and religious changes, the chapter was suppressed by political authority, some of its goods were confiscated, some were granted as dowries to parishes, which previously were conferred by the Primicerius, and the rest were freed from the bishop's collation. In the church of Saint Andrew, which was already a parish, although the care of it was exercised by two priests appointed by the chapter and the Primicerius, two other parishes, Saint Lawrence and Saints Simon and Jude, were united with it, and from all of these, a new parish was established, whose rector, although he still retains the title of Primicerius, was placed under the complete jurisdiction of the bishop, together with his church. And this state of affairs has not been changed since then, at least not notably; only in the political arrangements that occurred at the beginning of this century, some benefices still appear to have been restored to the service of the church of Saint Andrew. Indeed, mention is made by some of a request made by the parish priest to His Holiness, Pope Gregory XVI, which was made and obtained on [a certain date]."

[*Latin ed. p. 217*]

In MANTUA, on the 21st day of July, 1831, it was decreed that twelve beneficiaries of this church might wear the rochet with a violet mozzetta during the sacred functions. But today, these privileges have again been confiscated, and only four of the old beneficiaries remain, and those are old men and infirm; therefore, the Bishop foresees that soon, besides the parish priest and perhaps one or two assistant priests, no one else will remain in the service of the church. But whatever may be the case with this, the point of the matter does not properly concern this, but rather the privileges of honor, which the Primicerius has claimed for himself up to now, as if he were the successor of the first Primicerii, although he does not claim any ancient jurisdiction for himself, and indeed, he remains subject to the Bishop, as do all other parish priests of the diocese. For the Bishop notes: "This does not concern jurisdiction, but the entire matter pertains to the part of the aforementioned rescript of October 3, 1736, by which the Primicerius of the Chapter of Saint Andrew was granted the use of a precious mitre, a pastoral staff even without the attached veil, a pectoral cross, a stole, sandals, and chasubles in Masses and, respectively, in solemn Vespers in said church, on days granted to him, but not at the same time - but also on the same day - as the Pontifical functions are performed by the Bishop in the cathedral, and also the use of a lamp, or candlestick, commonly called a "bugia," both in said Masses and Vespers, as well as in private Masses with the facility of giving the triple blessing, in the manner of a bishop, and also privately to bless the people within said church only..." But the use of such great honors and privileges, besides being perhaps illegitimate, also offends the

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other parish priests of the city, and does not please the Bishop. Therefore, the current parish priest is ordered to defend his rights, which are indeed derived from the aforementioned bull of Sixtus IV, and especially from the aforementioned decision of the Sacred Congregation of Councils of October 3, 1736, and thus proceeds: "Such a decree has been issued, and it is constant regarding the use and exercise of the aforementioned concessions of the Holy Pontiff. But the most important thing is that, even now, the same..."

[*Latin ed. p. 218*]

218 The decree concerning Mantua is established and in force. He states: that he did not wish to harm the college of canons, already established by the Bull of Sixtus, due to the aforementioned suppression; not only because the action was an abuse of incompetent authority; but also because he did not understand that he was harming the privileges of the Primicerius, who continued to enjoy them; indeed, in the year 1805, he was entrusted with the care of souls of the suppressed parish of St. Lawrence in St. Andrea; hence the current title of the Primicerius Parish.

SYNOPTIC DISCUSSION: POINTS WHICH SEEM TO FAVOR THE PRIMICERIUS.

It is certainly a doctrine accepted by all, not that because some college has ceased to exist, it must therefore be considered completely extinct: "but if a college should fail due to the death of canons, or another similar cause, from which... it ceases to be a collegiate in fact, it nevertheless remains as such in name, as Felin, Innocent, Maschard, Barbosa, lib. 2 Tur. eccl. Univ. cap. 6 no. 9, with others whom he cites, and follows Rota in Cremensi, February 20, 1622, before Ramhaldo." Thus Ferraris, v. Collegiata n. 22 seqq. Furthermore, as a rule, it has always been maintained in canonical legal prudence that a civil suppression is truly nothing other than a spoliation, and cannot in any way be considered as the extinction of a collegiate. It is sufficient to cite Pitonius, who in his Disputationes Eccl. I, 1, disputation 8, examining whether collegiality can be lost through non-use, distinguishes two cases: "either collegiality has failed in the church and remains extinct by the authority of the superior, for a known reason, and then he says, it no longer lasts; because just as the college was established by the authority of the superior, so too it can be extinguished and removed by the same authority: or, it has failed and ceased due to some accidental circumstance, such as the death of canons or the oppression of enemies, and similar things; and in such a case, collegiality is always considered to endure in name, even if it is not in fact or use for any long period of time, as he distinguishes

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afterwards..."

[*Latin ed. p. 219*]

MANTUANA 249 = Gloss, in cap. Statutum de Election, in VI... Barbosa De officio et Potestate Parochi, part. 1, cap. 2, ante num. 2. "Thus also Baldi in Marginalia ad Innocentium, v. Civitas, where he states: 'Civitas, collegia, ecclesia, all these things can be destroyed by the authority of a superior, for a known cause, and then they lose all the privileges of the city and the college; but if they are oppressed by brigands, robbers, or tyrants, and are captured and destroyed, the monastery, church, or city; nevertheless, without any material body, it lives in a certain sense, and the soul, so to speak, exists without a body, and retains all its privileges...' And there is a reason for this difference, because when it is destroyed by law, the title is annulled; but a calamity caused by events does not take away the title nor the name." These teachings speak with stronger terms, namely, when not only the entire college was destroyed, but also when the very material church was completely destroyed. Therefore, they can be urged even more strongly in our case, in which not only the church, with its walls and roof, was preserved, but also the Primicerius of the chapter was always present, indeed, the chapter itself. For although it was suppressed under French domination, it seems to have been restored at least in some form, and enriched with new honors; for, as the present parish priest says: "My predecessor requested, even with respect to the dignity of the Primicery, a rochet with a mozzetta of violet color for the twelve beneficed persons serving this Basilica; and the Roman Pontiff granted an indulgence on July 18, 1851, which is still preserved in this Archive." This college, although repeatedly diminished by the malice of time, nevertheless still lives, as the Bishop himself recognizes. But whatever may be the case, and even if only one Primicerius is taken from the ancient chapter; nevertheless, the conclusion remains that the right of the college remains even in one person, and with him the name and right of the entire university, I. S. As in § In decisionibus ff. Quod cuiusque universitatis nomine; Pax Jordanus, Elucubrationes, vol. 2, book 7, title 5, no. 8, Bar-

[*Latin ed. p. 220*]

220 MANTUA, in *Summ. Apóstol. Décision*, v. *Collegiata* n. 3; *De off. et Potestate*, part. 1 cap. 2 n. 28, Pignatelli *Consult.* 150 n. 4, vol. 9. If it were objected that the church of St. Andrew, after being deprived of its status due to civil violence towards the end of the last century, remained in a simple parochial state, and therefore the title of "Primicerius" for its rector could not presume new rights and privileges, and that these benefits were different from those of the old canons and chapter, it could be answered, as with Pitonio in the aforementioned discussion, 8, that the rule in this matter is that "when the state of a collegiate church has existed from

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the beginning, the continuation of that state is presumed by law, unless the contrary is fully and clearly proven." Furthermore, the parochial status was not a quality that supervened after the collegiate status and, as it were, replaced it; but it existed simultaneously with the chapter, although it was exercised in a different way at that time, as has been stated. Therefore, with the extinction of the collegiate status, and with only one Primicerius remaining, this right, as well as other rights, should pass to him, according to what was said in the preceding article; and no difficulty seems to arise from this. Nor can anything be concluded from the fact that Bishops have freely appointed Primicerii as parish priests and have been subject to them. Since this could be said to have happened abusively. Moreover, under the current discipline, Ordinaries cannot destroy collegiate churches, just as they cannot erect them without apostolic permission. For, as Ferraris states in *Collegiata* n. 29, "the suppression of a collegiate church is not brought about by a decree made by the Bishop, declaring the church to be not a collegiate church, but a simple parochial church. Since the Bishop does not have the power to make a collegiate church into a non-collegiate church... much less does he have the power to make a collegiate church into a non-collegiate church." Thus also Pitonio, in the aforementioned discussion, agrees with others.

WHAT APPEARS TO BE OBJECTIONS TO THE PRIMICERIUS. But on the other hand, there are also arguments that present difficulties. In order that this may be better and more fully understood, it is best to refer to a similar case, which Pitonio mentions in the aforementioned discussion, in the eighth section, and to the conclusions...

[*Latin ed. p. 221*]

MANTUA, 22nd [of the month]. Here, a certain canonist became renowned. He recounts that the church of Cremona was, in ancient times, a collegiate and parochial church dedicated to Saint Giles, adorned with special privileges by the Holy Pontiffs, and where many canons resided, with their head presiding. However, at the beginning of the 16th century, during the French invasion that occurred at that time, the canons were expelled, and the collegiate church was completely suppressed. After the cessation of the enemy's incursion, the church "remained under the title of a parochial church, as Pitonius states, even today, without canons, who previously resided there for almost five centuries." At that time, the Bishop desired to establish certain canons; but, doubting whether he could do so, he consulted Pitonius, who concluded that, "under these circumstances, the Bishop cannot proceed to the erection of a canonry. For although the Bishop has the power to establish new canons in a collegiate church...; nevertheless, in this case, the church of Saint Giles cannot be said to be a collegiate church, except in name only; which, for this purpose, does not seem sufficient; since, in the opinion of the people, it is considered a

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simple parochial church, and the quality of being collegiate, as if hidden, is considered not to exist in reality, according to the rule which states that things which are equal in law are equal in fact." However, it is excluded that the Bishop can immediately and, under these circumstances, restore the canonry and the headship in that church. Therefore, the same doctor examines the question of whether the collegiate status should be considered lost due to the non-use of a single century: and, as was fitting, he responds, in accordance with the common opinion of the Doctors, that since the collegiate church was overthrown by force and arms, and not by the legitimate authority of superiors, it is now only to be considered destroyed in fact; but it continues to exist in potential. With this established, he maintains that the Ordinary can, after considering all things, issue a decree declaring that the church is to be restored to its ancient collegiate status. And with this preliminary step completed and finalized, he can then, most appropriately, establish the canonry; thus, he positively states: "That the Right Reverend Bishop has a safe and secure power to erect a canonry..."

[*Latin ed. p. 222*]

In the case of a church in Mantua, which was formerly a collegiate church, the first step is to restore the collegiality that is latent in the institution through a legal declaration, and thus, once actual collegiality is restored, it is possible to establish as many canons as desired, although, for the moral body to be truly formed, there must be at least three. Indeed, all of this can be applied to the question of how we are proceeding. For even here, the chapter was suppressed and eliminated at the end of the century by hostile forces; even here, the canons and the chapter were almost entirely exiled; and even here, after some time from the suppression of the chapter, and precisely in the year 1805, a parish priest was appointed in the church that had formerly been the chapter church; who took the title of "primicerius," just as the parish priest about whom Pitonius speaks also took a similar title. But just as Pitonius concluded in that case that, despite this, it was not a collegiate church, and that the title that the parish priest took was meaningless; so too, it seems that the same must be said in our case. And rightly so. For, although the collegiate church may have been unjustly suppressed, that moral body, at least in fact, certainly ceased to exist; and with the cessation of the body, its head and all the privileges attached to the body and its head must also cease. It makes no difference that a rector is appointed in the church that was formerly a collegiate church, and that he retains the title of the ancient dignity; for unless the chapter is restored, and he himself becomes its head, he cannot truly be that, nor can he claim the rights that belong to him. Nor does it matter for this purpose that the college was suppressed by force and through abuse. For, as Baldus notes in *L. Non ambigitur*, ff. *De leg.*, n. 3, "something

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is destroyed either by law or by the nature of things." If the college no longer exists in fact, then neither its rights, nor its privileges, nor its head exist. Therefore, in this case, the church cannot be called a collegiate church, except in name only, and the quality of collegiality, as if latent, is considered not to exist in reality, according to the rule that what is not in law, and does not appear, is not.

[*Latin ed. p. 223*]

MANTUA. 223. Here, Pitonius concludes his argument. Section 8. He adheres to the opinions and established resolutions, particularly those concerning Leodium, Rondinino, and the chapter of Caesaraugusta (Saragossa), and the chapter of Minori. He objects, stating that the rights of the college are preserved even in this case. To this, it can be responded that, indeed, this is absolutely true; but the point to be proven is precisely that the current parish priest of St. Andrew is the successor to the ancient primicerior (archpriest); which, however, does not appear to be the case, and indeed seems to be excluded by the difference in its institution, offices, rights, and nature. In truth, in the year 1805, a new arrangement of parishes was made in the city, and on that occasion, a rector and parish priest was appointed to the church of St. Andrew; however, he was appointed there not as a person of dignity, but as a simple parish priest. A territorial jurisdiction was assigned to him, but one different from that which formerly belonged to the chapter of St. Andrew. Furthermore, he renounced, along with his church, any subjection to the ordinary episcopal jurisdiction, in the same manner as other parish priests of the diocese; and he was in no way connected to any chapter. Therefore, he cannot in any way be considered as the true and effective successor of the ancient primiceriores, nor as the real possessor of their rights and privileges; but only as a simple parish priest, appointed in place of the chapter, so that the important church would not be abandoned, and so that provision could be made for the care of souls. This is also implied by the confession of the parish priests of St. Andrew themselves; for they have never dared to claim the superior rights and jurisdictions of the ancient primiceriores. If, on the other hand, the current parish priests of St. Andrew succeed to the ancient dignities, not legally, but merely in name and by order of time, then nothing of value can be derived from this. Rights granted to a dignity, if the thing itself perishes or is lost...

[*Latin ed. p. 224*]

224 The dignity of Mantua is relinquished, according to L. 69 and 167 of *De reg. iur. civ.* and L. 14 of *De reg. iur. in VI*. This conclusion gains greater force from the fact that we are dealing with matters concerning privileges and exemptions; which not only offend the episcopal authority and dignity, but also, as the Bishop notes, to some extent, the parish priests

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themselves. Indeed, in these matters, especially if there is any doubt as to which interpretation should be adopted, L. 7 of the *Codex De praec. Imper. off.* and chapters 1 and 2 of *De fil. presb. in VI*, with the common consent of the Doctors, are to be consulted. Furthermore, even if, under Austrian rule, twelve beneficed individuals were found to have been restored to the service of the church, it does not follow that the restored chapter is thereby established. For, besides the fact that there is no decree establishing the restoration of the collegiate body, as would have been necessary based on the alleged teaching of Pitonius, it must also be noted that the beneficed individuals who are attached to the service of the church, and who are still called by that name, are in no way canons. And furthermore, these individuals, like the church and the parish priest, have always remained subject to the Bishop, and have always been entirely dependent on him, and have never claimed any ancient rights for themselves; which they certainly would not have failed to do, had they considered themselves to be constituted as a chapter, and subject to the ancient canons. As for the grant of privileges which the beneficed individuals obtained from the rescript of Gregory XVI, they appear to have obtained them either through the benevolence of the Prince, or perhaps, as the Bishop suspects, through some deception. For in the petitions made to obtain these favors, the reason of decorum, with respect to even the mitred Abbot, was alleged to be effective in obtaining the favor. This reason, of course, was highly doubtful. From all of the above, it must be concluded that nothing of the title of "primicerius" belongs to the parish priest of St. Andrew, and indeed, not even the proper name of "primicerius." Therefore, according to the strictness of the law, as stated here, he would not only be obliged to perform parochial duties and to celebrate the parochial Mass, like all other parish priests, according to the prescription of session 27, chapter 1; but also to...

[*Latin ed. p. 225*]

MANTUA, 225: Insignia honoris to be removed; unless, however, the Collegiate Church of S. C. C. deems that some honor ought to be retained for this parish priest, or to be granted anew by a special indult. Having considered these matters, the following questions were proposed:

I. Does the parish priest, in the case of St. Andrew, possess the rights of a primicerius (first priest) of honor? And to what extent? Answer: No.

II. Should assent be given to the requests of the Bishop in this case?

RESOLUTION: The Holy Congregation, having considered the matter on June 16, 1888, decided to respond as follows:

Considering the circumstances of the place and time, nothing should be changed, provided that the primicerius of St. Andrew does not perform pontifical functions at the same time as the Bishop.

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FROM WHICH THE FOLLOWING MAY BE GLEANED:

I. From the opinion of the DD. (Most Reverend Fathers), a collegiate church, which ceases to be such through its actions and usage, even for a very long time, through the death of the canons, or through another cause, nevertheless retains its status.

II. Civil suppression is considered in canon law as a spoliation, by which the rights and privileges of the collegiate church are in no way extinguished.

III. While colleges and churches lose all rights and privileges if they are destroyed by legitimate authority, for a known cause; if, on the contrary, they are oppressed by robbers or tyrants, they continue to exist, and in a certain way, the soul exists without the body; and all privileges remain; for if something is destroyed by law, the title is also annulled; but spoliation, an act of injustice, does not take away the title or the name.

IV. Within the church, not only the material aspect is preserved, but also the Chapter, and the primicerius, who is the head of the Chapter itself; and the parochial status was not a quality that subsequently destroyed the collegiality, since it was already present simultaneously with the Chapter itself.

Acts, Volume XX, page 445, number 15.

[*Latin ed. p. 226*]

226. In MANTUA, the rule in this matter is: unless the contrary is fully and conclusively proven, the presumption of law is for the continuation of collegiality, when from the beginning it is established that such a state existed. VI. Collegiality is not suppressed by a decree of the Bishop; because it is not within the power of the Ordinary to establish a college or to decree the suppression of one that already exists. VII. In the matter, when the Bishop has neither suppressed the college by his decree, nor has it been formally proven in any way that collegiality has ceased over time, it is rightly presumed that the right, and the name of the college, remains in one Primicerius, in whose favor the Apostolic See has also judged it fitting to maintain the original honors granted.

VII. NULLITY OF MARRIAGE. April 7, 1883, and June 16, 1888. Session 24, chapter 1, concerning the reform of marriage.

COMPENDIUM OF THE FACTS. Francisca Kostrovitzky, orphaned at a young age by her parents, was taken under the guardianship of her aunt, Anne Sdekowski, a widow, who shortly thereafter entrusted her to the nuns of the Visitation. She spent several years with them. Then, the guardian brought the young woman back from the monastery; and at this time, together with the aforementioned niece, she also took into her own home her sister, Leucadia Sianogenska, a woman, as it is asserted, greedy, cruel, and covetous of her sister's possessions. Therefore, influenced by

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the instigation of this woman and the threats of the guardian, Francisca, who was then 17 years old, entered into marriage with a noble young man, Boleslaus Nemorsciansky, in the private home of her aunt on April 5, 1866, with the customary proclamations dispensed with. After the marriage, Francisca, who had never strongly loved her husband, began to dislike him greatly; and she frequently left the marital home, returning to her guardian, from whom she was often rejected, and repeatedly returned to her husband, with whom she had two children.

[*Latin ed. p. 227*]

VILNA. On the twenty-second day, Francisca, with her aversion to the man growing daily, at one point resolved to take her own life, until, in the year 1873, she initiated a cause for the nullity of the marriage before the episcopal court of Vilna, citing coercion and fear. After the proceedings were completed, and after several witnesses had been heard, with the exception of the guardian and her sister, who were then abroad, the Vilna Consistory, on December 20th, rendered a judgment declaring the marriage null. This judgment was subsequently confirmed in full by the Metropolitan Consistory of Mogilev, after it had ordered certain documents to be completed and after having heard the defender of the marriage *ex officio*; however, the approval of this judgment by the Archbishop was reserved before it could be put into effect. But the Archbishop did not deem it fitting to adhere to this judgment, considering the marriage to be valid and legitimate. The guardian and her sister, who were portrayed as the perpetrators of the abuses, had not yet been heard; they were then subjected to examination. The guardian's sister testified that she was partly responsible for Francisca's misfortune: she stated that she spared no effort to persuade Francisca, together with the guardian, to marry the young man Boleslaus. Furthermore, Francisca, she said, was threatened with being driven from the house without a dowry if she refused; to this threat, Francisca yielded, and the marriage was entered into. The guardian also testified that she was responsible for Francisca's misfortune by forcing her, through threats and physical torments, to marry Boleslaus, whom she clearly did not love. She continued, saying that she threatened to cast her out of her house without a dowry, and also to hand her over to her sister, Gorvatova, whom Francisca greatly feared. Despite these testimonies, the Archbishop refused to confirm the judgment of the Consistory of Mogilev, and the Sacred Congregation, to which the case was presented, was of the opinion that the question of whether the marriage was null should be determined, and that further evidence should be gathered, according to the instructions to be given by the defender of

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the marriage *ex officio*.

[*Latin ed. p. 228*]

228 VILNA. The instruction of the Defender, transmitted to the Vilna court, was largely fulfilled; except that the guardian, Sdekowska, who, according to the aforementioned instruction, was to explain what physical torments she had prepared in order to obtain Francisca's consent, could not be questioned, since she was already deceased. The other witnesses, for the most part, repeated what they had testified in the previous trial, with some minor variations. Only two new witnesses were presented, both of whom had been servants in the household of Anna Sdekowska at the time of the marriage. The first stated that she knew both Francisca and her guardian; she considered the guardian to be of good character, and that the guardian had desired to arrange the marriage between Francisca and Boleslaus before leaving the country, placing no trust in Francisca, who loved worldly pleasures. The first witness further stated that the guardian had urged Francisca to marry Boleslaus, and that she had sent Francisca to the home of Lady Gorvatova only if she did not marry Boleslaus. Francisca, she said, had preferred to enter into marriage with Boleslaus rather than be sent to Lady Gorvatova, who lived a devout life and did not tolerate frivolous young women. Furthermore, the first witness stated that at that time, Francisca was considering entering into marriage with Boleslaus, who pursued her with great diligence and care. The second witness stated that she knew nothing of any violence or threats used against Francisca to induce her to marry Boleslaus; but that Francisca had been told that she must choose between two options: either to marry Boleslaus, or to go to Lady Gorvatova. Francisca had preferred marriage, because she knew that she could not live a virtuous life at Lady Gorvatova's, who led a strict and holy life, and who often exhorted Francisca to abandon her frivolous ways and live a Christian life. The same witness stated that for six months there had been a relationship between Francisca and Boleslaus, and that she had known that Francisca loved him; but she hoped that this would change with the marriage.

SYNOPTIC SUMMARY:

DEFENSE OF THE WOMAN. The Defender, who defends the interests of the woman, primarily insisted on the exception of the res judicata, since in this...

[*Latin ed. p. 229*]

VILNA. 229. Because two judgments, both declaring the marriage null, were issued, first by the Vilna Consistory and then by the Metropolitan of Mokolov, and although the Archbishop did not retract the second judgment, nevertheless, contentious jurisdiction can be exercised by a delegated

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judge, and after he has definitively pronounced a judgment, it is forbidden to invalidate it by the one who delegated it, according to the principles of both laws. "The judge cannot correct the judgment once," for he has fulfilled his office, whether well or poorly. L. 55 ff. De re iudicata et effectu sententiae; and Ferraris, sententia n. 5. "A definitive judgment, once pronounced by a judge, cannot be revoked by the same." Therefore, since the authority of the delegating party and the delegate is one and the same, the jurisdiction to revoke judgments can only belong to the superior tribunal. Devoti, Institutiones Canonicae, vol. 1, title 2, § 82, Cap. 6; Decretum; and even more, the Archbishop's annotation: "I cannot consider the judgment of the Consistory to be valid, because it was not issued by the Archbishop sitting as a tribunal and observing the order of law, but by reviewing the acts of the case in his own home, and, as the jurists say, in secret; and this is a way in which a judgment can never be issued," according to leg. 6 of the Code of Canon Law, and interlocutory, Cap. 5 De sent. et re iudicata in VI; Devoti, Institutiones Canonicae, vol. III, title 14, § 4; Ferraris, verb. Sententia, n. 11. After this, the defender first attempted to show that the marriage in this case was null because of a lack of free consent, and secondly, that this defect of nullity could not be remedied by subsequent cohabitation. Regarding the first point, noting that marriage requires both consent and freedom of consent, chapter 25 De spons. et matr. states that a great and open violation of this freedom is not required, since prayers and violent persuasions, which can deflect the mind, seem to suffice: thus, S. C. in Parisien, Matrimonii, June 25, 1864, in the document transmitted by Cosci, De separatorii, lib. I, cap. 25, n. 21; Panimoll, Dec. 62, n. 23; Tondut, quaest. 117, n. 19. For greater freedom is required in marriage than in other contracts; Sánchez, lib. 4, t.

[*Latin ed. p. 230*]

VILNENI, disp. 6, n. 2; Pontius, De imped. matr. caus. 21, quaest. 2 et 3, § 13; Consci, lib. I, cap. 8, num. 38; and others. Given these circumstances, which are present in the matter at hand, it can be sufficiently and abundantly inferred, the advocate stated, that the consent of Francisca, which is required for the validity of marriage, was obstructed; and that, upon examination, the girl's age and sex are evident, as she was taken from the monastery and, lacking any support, was under the authority of an external guardian and her sister, who, according to the testimony of Victoria Bogulansha and others, were acting with malicious intent towards the niece, to whom she was entirely subject. Furthermore, he added, the woman's great aversion towards men, both before and after the marriage, is evident, from which it can be argued that there was a lack of consent and that fear was instilled, as stated in the recent decision of the Rota, 23rd part, 12th section, n. 7. However, the advocate noted, the witness Korsan, an acquaintance of the guardian, testified that it was impossible to conceal the

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mutual disagreement and the arguments between the girl and the guardian regarding the proposed marriage, on the one hand, and the opposition to it, on the other. The witness Bogulansha, when questioned by the defender of the bond in a new examination, as to whether Francisca had shown hatred after the marriage was completed, and whether this hatred originated from coercion to enter into the marriage, replied: "Before the marriage, the spouses did not know each other; but after a year from the beginning of the marriage, Francisca showed anger and hatred towards her husband, with whom she had been forced to marry under threats." Furthermore, the advocate noted, the witnesses do not mention any vexations or violence in a specific sense, since these, for the most part, are carried out in secret. And that this was indeed the case, Francisca herself stated in a written statement – there – "But the witnesses fail to testify to how cruelly my guardian treated me. My guardian had to vex me in secret. She knew that she would have suffered a legitimate punishment if witnesses of her cruelty had existed. But she (being near death) confessed that she had often treated me cruelly, as had also her sister."

[*Latin ed. p. 231*]

YEAR 231. Moreover, the witness Korzak, and the relative of the guardian, affirmed: it must also be noted that Francisca was incessantly terrorized by threats, which were directed at her, so that she would be sent to Gorvatova, at whose name she trembled, and she was deprived of her dowry and all means of support for living. However, the fear of losing possessions is said by the Doctors to be a grave fear, indeed falling upon a steadfast man; Sánchez De matr. lib. 4 disp. 5 num. 20 et seq. Pigna tells us in Consult. 77 tom. 7 n. G, and others. Furthermore, the defender observed that the testimonies of the two female servants recently heard were of little value, because they were uneducated and lowly servants, before whom the lords never converse about family matters and secret things. Regarding another point, namely, that in this case the marriage could not have been ratified by subsequent union and cohabitation, the advocate recalled that, according to the decrees, two things are required to invalidate a marriage: namely, knowledge of its nullity, and the spontaneity of the cohabitation; Schmalzgr. tom. 4 part. 1 tit. 1 § 421. Sánchez De matrim, lib. IV disp. 18 n. 3. et seq. Indeed, even if there were knowledge of nullity in the spouse, and even if spontaneous cohabitation were present, the marriage could never be ratified, as Barbosa teaches in Vot. decis. lib. 2 vol. 17 n. 48; notwithstanding the subsequent birth of children, whom the Church, however, wishes to consider as legitimate, cap. 2 tit. Qui filii sint legit. In this case, neither of these two conditions is verified; and this, the advocate stated, is confirmed by the constant assertions of Francisca regarding the man, and by the fact that the young girl, ignorant of any law, believed that there was no other way to remedy her unhappy condition than to take her

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own life, unless she had been instructed by others, to bring a judgment for nullity. But these things were stated by the advocate in abundance, since after the Council of Trent, it is necessary to contract the marriage again before the parish priest and witnesses in order to ratify it; Trid. cap. 1 sess. 24, Fagnan. in cap. De illis de desp. impub. n. 13, Barbosa in Vot. decis. lib. 2 vol. 17 n. 178. This was also affirmed by the Sacred Congregation in Ilispalen, on June 20, 1609.

[*Latin ed. p. 232*]

232 VILSEN, *lib. 11 Decretor*, page 58, verso, in the section concerning Nullities of Marriage, in Palermo, September 20, 1719; § Concerning nullity, in *Gnesnen. Matr.*, December 17, 1735; § These [principles] apply in other cases as well. He adds that, in the case of a hidden impediment, and when there is no danger that it will ever be revealed, the Supreme Pontiff has customarily granted a dispensation from the marriage by renewing it, so that no scandal may arise from the discovery of the hidden impediment. See the Rota's decision, 300, before Serafini, and the chorus of Doctors; Schmalzgrueber, *tom. IV, part. 1, tit. 1*; Cosci, *De separat*, book 1, chapter 5, n. 85; Sánchez, *lib. 2, disp. 37, n. 14. The matter concerns an impediment that is already known to witnesses and has been brought before the forum. Regarding this, see Sánchez, *lib. 2, disp. 37, de matrim., n. 14*: "Although the parish priest and the witnesses may be ignorant of the coercion in the act of the sacrament, it is always a public impediment, which can be demonstrated and proven even by two witnesses in the external forum." Finally, it must be added that the spouses do not at all seek to establish marital relations; rather, the woman has labored and insisted for fourteen years to obtain a declaration of the nullity of the marriage.

OBSERVATIONS OF THE DEFENDER OF THE SACRED BONDS. The advocate for the validity of the marriage, for his part, noted in the beginning certain reasons for which the Archbishop refused to subscribe to the sentence pronounced by the Mohiloviense Consistory, and which he immediately communicated to that same Consistory in writing. First of all, he wrote on December 1st, that the spouse, Boleslaus Nemorsciansky, was questioned without a prior oath, and in the absence of the defender of the marriage. Although he did take an oath, he did not confirm his previous declarations. The depositions themselves cast doubt on whether Francisca was coerced into the marriage with Boleslaus; thus, for example, she answered question no. 5: "I lived with Boleslaus for seven years; I was the first to suggest that we abandon our common life, because my husband had become unpleasant to me." When answering question no. 4, she stated: "I fulfilled my marital duties only at the beginning."

[*Latin ed. p. 233*]

VILNA. 233rd year since the marriage began. The Archbishop consid-

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ers Francisca's confession to be inconsistent with the truth, because the marriage began on April 5, 1886, while her daughter, Alina, was born and baptized on November 27, 1867. But even setting these matters aside, the defender of the marriage draws the attention of the Most Eminent and Reverend Fathers to a letter which the Bishop of Vilna, after the conclusion of the process, sent to the Sacred Congregation on January 2, 1884, in which, while presenting very serious objections against another marriage case, the same objections also apply to the present case. The prelate writes: "This case, concerning the spouses Rimkiewicz, besides the lack of jurisdiction on the part of the vicarius capitularis Zylinski, to whom the matter was proposed for consideration, also suffers from the vice of fraud and prevarication, since the acts of the entire process were completed not with due diligence. In this case, as the defender of the marriage knew well, having previously examined it in the Consistory of Mogilev, both parties pretended to allege the nullity of the marriage contract, as if it had been contracted invalidly under duress, so that they might indulge in lust more freely and contract a second marriage sacrilegiously. The same must be said of the acts of the marriage process of the spouses Niemorszanski." And although the prelate did not, as the Sacred Congregation ordered, clearly explain the reasons on which his opinion was based, because he was unjustly exiled to Siberia, nevertheless, the defender of the marriage states that, at the order of the Most Eminent Fathers, witnesses were again summoned for examination, and they sufficiently demonstrate that that process truly suffers from the vice of fraud and prevarication, and that the acts of the entire process were not completed with due diligence. Therefore, the previously collected evidence is not only insufficient, but is entirely worthless. Indeed, Francisca asserts in the first process that she was ejected from her home by her guardian, Sdekonska, with the cooperation of the priest Patzinko, who, when questioned about this matter, stated that it was true. But the same priest, being summoned again for examination in the new process, with the aforementioned words, denied that he was present, denied that...

[*Latin ed. p. 234*]

234. [Regarding] the accusations which were asserted in the initial proceedings, namely, the prayers, persuasions, and violence applied to Francisca. Furthermore, according to the records of the initial proceedings, Anna Sdekovska, Francisca's guardian, confesses to being guilty, and admits to having used violence and threats in order to extort the consent of the ward in the matter of the marriage with Boleslaus; indeed, she says, she even considered physical coercion. The parish priest, Patzinko, confirms these acts of violence in the same initial proceedings, as if he had heard them from the mouth of Anna Sdekovska herself. However, in the new proceedings, these acts of violence are denied. And Fatiana

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Martinovicz, one of the new witnesses, clearly confirms this. And rightly so, for if such acts of cruelty had truly occurred, the parish priest Patzinko would certainly have known it, and the forced marriage would not have been permitted. Moreover, in previous testimonies, the deposition of Emilia Veronetz was presented, in which she stated that she had heard more from Francisca herself about her complaints and hatred towards her husband, and about the violence used to force the marriage. However, after being questioned again, Emilia Veronetz confesses that she does not know whether Francisca was truly forced into the marriage. Indeed, the most recent witnesses, as appears from their words cited above, attribute this woman's hatred towards her husband not to coercion, but to the immoral behavior of Francisca herself. Finally, the defender of the bond states: if the records of the initial proceedings are to be believed, nothing more wicked could have been devised than those three sisters, the Sdekovskas, the Sianogenskas, and the Gorvatovas; but on the contrary, in the records of the new proceedings, these sisters appear to be endowed with excellent character and piety. Therefore, it is rightly noted by this defender that the Sdekovskas and their sisters, before undertaking this matter, proposed an alternative to Francisca: either to marry, or to live with Gorvatova, as if this were perfectly suited to Francisca's gentle nature, and would be beneficial to her reputation. And there was certainly nothing to be feared from this, if Francisca desired to live modestly and Christianly. Indeed, marriages cannot be said to be forced, which are performed when the possibility of sinning is not anticipated.

[*Latin ed. p. 235*]

VILNEN. 235 Concerning that which is argued to the contrary, namely, that Francisca was threatened with the loss of her dowry and the ruin of her life; the defender of the bond responds that, in a new proceeding concerning this matter, neither flight nor word is given, and that these threats do not constitute a just impediment, because the tutor could not, either by law or through injustice, deprive the minor of her dowry or other goods, since she held the administration of the minor's goods without any property of her own, and was subject to the rigor of the laws. With these things noted, the purpose was to examine the doubt as to whether there exists a nullity of marriage in this case. RESOLUTION. After the Sacred Congregation was informed and discussed on June 16, 1888, it decided to respond: Negatively. From which the following may be gathered: I. When contentious jurisdiction is exercised by a delegated judge, the delegating authority, who has the same authority as the delegate, cannot invalidate a sentence pronounced by the delegate, whether he has performed his office well or poorly. II. A final sentence, once pronounced, cannot be revoked by the same judge; and therefore, since the authority of the delegating judge and the delegate is one and the same, neither of the two may revoke the

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sentence pronounced; this jurisdiction only pertains to a superior tribunal. III. Marriage cannot be valid without consent, nor can consent be valid without liberty. IV. To infringe upon liberty, it is not always necessary to employ open force and great fear; but sometimes prayers and violent persuasions may suffice, which are capable of bending the mind; since, in marriage, greater liberty is required than in other contracts. V. Marriage cannot be made valid from a public impediment by a subsequent union and cohabitation, but, according to the Council of Trent, it must be contracted again before a priest and witnesses.

[*Latin ed. p. 236*]

236. It was declared that there was no marriage in the matter of force and fear, nor was it formally proven; because the threats and entreaties used to move the mind of Francisca were not of such a nature as to constitute a just fear, according to the judgment of B. E. I. Therefore, it does not appear that a decree was issued concerning the validity of the marriage.

REGIEN. REGISTRY OF CHORAL SERVICE. June 16, 1888. Session 24, Chapter 12, Concerning Reforms.

SUMMARY OF FACTS. For ten years now, the clergy or chapter of the church of St. Nicholas in the city of Regien had been making requests with the aim of alleviating the burden of the choral service, since, with the number of priests reduced and the revenues diminished, it was becoming too heavy to bear the same service as before. And on June 15, 1878, it was written in the general assembly of the E. E. P. P.: "For the sake of granting [a dispensation], in accordance with the Bishop's vote No. II, as long as the aforementioned circumstances persist, the matter shall be carried out with the Most Reverend [Bishop]."

However, the Bishop's vote No. II placed the following limitations on the granting of the dispensation, namely: "that the obligation of the daily office be retained, with only one conventual Mass, and that, even if an exemption is granted from the nocturnal office, except for the more solemn feasts of the year, namely: Easter, Pentecost, the Nativity and Epiphany of Our Lord Jesus Christ, and the Feast of the Body of Christ and their octaves; the Ascension of the Lord, the Assumption, the Nativity and Conception of the Blessed Virgin Mary, the Feast of St. Joseph, the spouse of the Blessed Virgin Mary, and the feasts of the holy Apostles Peter and Paul; All Saints' Day; the titular feast and the dedication of the church of St. Nicholas of the Bishop. However, no one from among those belonging to the collegiate body shall be exempt from these obligations, but all, both from the priestly order and from the clerical order, shall be bound."

[*Latin ed. p. 237*]

REGIEN. 237. Now, these same presbyters approach again, requesting a new and more extensive indulgence. For they state that what was possible

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during the time of the apostolic indulgence, is now impossible to fulfill, since the collegiate church now numbers only five priests, and it rarely happens that two or more can attend the choir, either due to business or infirmity. Furthermore, the priests themselves cannot enjoy the vacations granted by the indulgences. Therefore, to alleviate this burden somewhat, they propose a plan in which the choral service is reduced to 115 days, in which, however, only the hours of the day and the conventual Mass are prescribed, while the complete nocturnal and diurnal office is preserved on certain more solemn days of the year. Moreover, they distinguish the points of service and assign 9 points for the office of Sundays throughout the year, and for some other lesser feasts, but with a doubled or tripled point value on other days or on those in which the complete office is recited. And thus, they assign 1236 points for the entire year's service. Therefore, they request two things: 1. namely, a reduction of the service both in terms of the number of days and in terms of the burden of the office, and 2. that the vacation be granted not by days and months, but by points. When questioned, the Bishop replied that a new plan of service had been drawn up with the consent and counsel of his court, and that it seemed just and equitable; therefore, he recommends it.

A SYNOPTIC DISCUSSION: PRAYERS THAT SHOULD BE REJECTED. The law of fulfilling the entire daily office, as prescribed in the Council of Trent, Session 24, chapter 12, concerning reform, and constantly defended by the Sacred Congregation of the Council, has been confirmed and imposed universally, even upon those who are reluctant, as affirmed by Benedict XIV, *Inst. eccl.* 107, number 7 and following. The same must be said of the conventual Mass, which has been declared and established to be celebrated daily for the benefit of the benefactors, as stated by the same Benedict XIV, in the constitution *Cum semper oblatas*, dated August 19, 1744.

[*Latin ed. p. 238*]

238 REGULATION. Concerning the matter of vacations, the Council of Trent, cited above, chapter 12, session 24, granted the following for this purpose: "A trimester is comprised of months and days, and not of canonical hours; therefore, the very wording of the law opposes the petition of the clergy of the church of St. Nicholas." Furthermore, a peremptory declaration of the Holy Congregation was given in L'Aquila on June 17, 1594, contained in the book of Decrees, page 92 verso: "The Holy Congregation judged that nine months should not be counted in terms of hours, as if those who have fulfilled nine parts of the twelve hours that are counted from the whole year have satisfied the debt of nine months of service, but rather, the actual days of residence and service, whether continuous or intermittent, must be counted, so that the number of the said nine months is completed." Moreover, it is observed in practice that, when service is re-

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duced to 115 days, and in those days the burden of office is usually halved, the petitioners for vacations seem to receive, and indeed receive, two hundred and more free days. PRAYERS SHOULD BE HEARD. However, on the other hand, it must be considered that the church of St. Nicholas, although commonly and in the very apostolic documents it is often called a collegiate church, is in reality not a collegiate church, but a parish church. For, from the beginning, at the end of the fifteenth century, the Brothers Zoboli petitioned for and obtained its elevation to a collegiate church with a parish priest; but, by new requests from the patrons, Sixtus IV, on February 9, 1481, permitted eight canons and four lower clergy to be removable at the will of the patrons. And this arrangement has been maintained ever since to the present day. And although, by the very apostolic bulls of Sixtus IV, these priests are obligated to choral service, namely, the conventual Mass and the Office, this prescription is rather the effect of the will of the founders than of a disciplinary law of the chapters. Therefore, it does not seem to truly impede the hearing of prayers on this matter, or the reduction of choral service.

[*Latin ed. p. 239*]

REGIEN. 239. The law of the Church, that is, the disciplinary law of the chapters, but rather the will of the founders. However, whether this or that, it seems that the matter has come to a state from which it could not have begun, and in which a new arrangement, whether it is called a change of will or a dispensation from the law, appears necessary. In this opinion, as in other matters on several occasions, and ten years ago, the Sacred Congregation of Clerics, under the favor of the same Saint Nicholas, entirely agreed. Furthermore, if at that time the Sacred Congregation of Rites approved of that reduction of service, by which the burden remained almost halved; today, since the canons have become weaker in strength and age, and fewer in number, the nature of things itself seems to require a further reduction. However, what reduction, and whether that which is requested by the petitioners and recommended by the Bishop is to be admitted, was deferred to the judgment of the Most Reverend Fathers. Then it was determined to resolve the doubt: Whether and to what extent a choral reduction of service should be granted to the petitioners in this case. RESOLUTION. The Sacred Congregation, having knowledge of the matter on June 16, 1888, decided to respond: Affirmative, according to the request. ANNECY. DECREES REGARDING FIRST COMMUNION. July 21, 1888. Session 13. Decree concerning the Holy Eucharist, chapter 2. SUMMARY OF THE FACTS. By pastoral letters of December 27, 1884, the Bishop of Annecy stated, among other things, the following decrees: No boy or girl shall be admitted to receive First Communion, 1. unless they have completed their twelfth year; 2. unless they have faithfully followed the catechism in

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the two preceding years.

[*Latin ed. p. 240*]

240. Regarding the children from eight to ten years of age, they shall attend catechism twice a week; that is, on Thursday and on Sunday, at the hour determined by the pastors, according to the special conditions under which their respective parishes are found. Those children who have not regularly attended catechism for these two years will not be admitted from the age of ten among those who are being prepared for their First Communion, and this action will be postponed for them for several months, or even for a whole year. From the beginning of the year 1885, no child shall receive First Communion in any parish of this Diocese before the month of May. However, these decrees, especially those concerning the age and date of First Communion, have not been accepted by some of the pastors, and among them, in particular, is the archpriest of the place, named Tissot, who, for this reason, at the beginning of the year 1887, appealed to the Holy See, asking whether the indicated decrees concerning the age and date for First Communion were valid and obligatory in conscience. Meanwhile, the Bishop defended his dispositions in a public letter dated March 11, 1887. Among these, a particular opinion was expressed by the Reverend Consultor, who considered that it should be answered affirmatively to the doubts presented by the pastor Tissot, namely, whether the decrees prescribing the age and date for First Communion were valid and obligatory in conscience. But since the pastor did not agree, hence, on this matter, the highest ecclesiastical sanction was imposed.

A Synopsis of the Discussion: PAROCHIAL RIGHTS. Furthermore, in his defense, the pastor, or, by the name of pastor, his defender, considers the most serious words of the Lord: "Then Jesus said to them: Amen, amen, I say unto you: except you eat the flesh of the Son of man and drink his blood, you shall not have life in you..." For my flesh is food indeed, and my blood is drink indeed." (John 6:54-55).

[*Latin ed. p. 241*]

CHAPTER 241. With these words, the Eucharist is related to our spiritual life in the same way that material food is related to the physical life of man: and just as we eat and drink food to sustain ourselves, and we need it immediately and constantly, so too that divine food is necessary for the preservation of spiritual life, as soon as a person reaches the age of reason, as taught by the Council of Trent, Session 13, chapter 12, decree concerning the Holy Eucharist, stating that the faithful "cannot escape the weight of their sins unless they are nourished and strengthened by this spiritual food, unless they take the antidote by which they are freed from daily sins and are preserved from mortal sins." Therefore, the speaker, with this in mind, concludes that just as it would be imprudent for a prince to

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enact a law that would postpone the time when children should be fed, so too it should be considered imprudent to establish a rule that absolutely prohibits children from approaching the Holy Communion before completing their twelfth year; for by this, many who could devoutly and reverently approach the heavenly table, be freed from vices, and receive a pledge of future glory and eternal happiness, would be kept away for a long time, and with their own inevitable detriment. Therefore, the Church, in her general laws, has rightly ordered that, in the case of children who are candidates for their First Communion, not the number of years, but the condition of the mind should be considered. For she wants those who can devoutly and reverently approach the Holy Table to do so; which depends primarily on the maturity of judgment and the understanding of spiritual things, to which some arrive sooner and others later, as stated by Benedict XIV in *De Synodo Dioec.* I, 7, chapter 12. And indeed, the Council of Lateran V, in chapter 12, book 5, decree, title 38, states: "Every faithful person, of either sex, after having reached the age of reason, should confess all his sins, at least once a year, faithfully to his own priest; and he should strive to fulfill the penance prescribed to him, and should reverently receive the sacrament of the Eucharist at least at Easter." The Council of Trent, in Session 12, canon 9, states: "If anyone denies that all and each of the faithful of both sexes, when they have reached the age of discretion..."

[*Latin ed. p. 242*]

242 ANNECIEN. Those who, having reached the age of discretion, abstain each year, at least during Easter, from receiving Holy Communion, contrary to the precept of Holy Mother Church, are excommunicated. It is important to note the words "age of discretion," which clearly exclude a fixed and specific age, and rather indicate that moral capacity should be considered. Therefore, it seems fitting to quote St. Alphonsus: "The Doctors commonly say, speaking regularly, that children are not obligated to receive Holy Communion before the age of nine or ten... It is said 'regularly,' for, as the authors point out, children may be obligated sooner if they are observed to be more perceptive before that age. Therefore, Roncaglia rightly reproaches, in chapter 6, regulation 5, the parish priests who indiscriminately do not admit to Holy Communion only those children who have reached a certain age." And, with even stronger words, Vasquez concludes in *3 Disputationes Sancti Thomae*, 214, chapter 4, number 44: "If a child has once attained the use of reason, he is immediately obligated by divine law, so that the Church cannot entirely absolve him." The authority of the Roman Catechism also supports this, which, in number 63 on the Holy Eucharist, teaches that children should be admitted to the sacraments when they have begun to have some knowledge and experience of this sacrament; and it adds that this should be determined not by decrees, nor by the number of years, but by the prudent counsel of parents and con-

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fessors: "But no one can better determine at what age the sacred mysteries should be given to children than the father and the priest to whom they confess their sins. For it belongs to them to inquire and to question the children whether they have received any knowledge of this wonderful Sacrament and have had some experience of it." But what is even more significant is the explicit opinion of the Holy See. For when considering the revision of the provincial council of Rothomagensis, where, in title 2 on the Eucharist, number 2, the following was stated: "No one shall be admitted to receive the Sacrament of the Eucharist for the first time unless he has reached the age of twelve at least. However, the parish priests must remember to..."

[*Latin ed. p. 243*]

ANNEGIEN. 243: "They have found them properly disposed, and they can no longer deny them that most excellent bread, which is the life and perpetual health of the soul." S. O. C. (Sacra Congregatio Consilii) on March 15, 1851, decreed that this article should be revised, and stated: "It is not established by any canonical law that the Holy Communion should not be administered to children before the age of twelve years; therefore, it seemed better to delete the first paragraph of Emiss Patribus, no. 2, and to say, in accordance with the form of the Roman Ritual, as well as the Roman Catechism for the faithful, published by order of the Council of Trent: 'No one shall be admitted to receive the Sacrament of the Eucharist for the first time, unless he has already some knowledge and understanding of this Sacrament, especially under the jurisdiction of the parish priest and the priest to whom the child confesses his sins. Let the parish priests remember that they can no longer deny to those children who they have found to be properly disposed, that most excellent bread, which is the life and perpetual health of the soul.'" It is said that the decree, which assigns the age of 12 years for the first Communion, can be considered tolerable because the Bishop may be disposed to moderate it. Indeed, the Bishop, in a public letter of February 2, 1887, explicitly stated that he would dispense with the rigor of the decree; but under this double condition: 1. that there are few days remaining for the child to reach the required age; 2. that the parish priest must obtain a dispensation from the Bishop himself. From this, it is clear that the episcopal decrees are moderated only to a very small extent; indeed, and even in a way that is not entirely safe. Furthermore, the Sacred Penitentiary, on June 8, 1843, as reported in the Amico Cattolico, page 16, year 1852, when it discovered the practice in a certain place of informing the ecclesiastical superior of the names of young people who should be admitted to the Holy Table for the first time, strongly condemned this practice; and rightly so, for such a disclosure can rarely be made without some revelation of the spiritual needs of the children, and some close indication of the sacramental seal. Nor does the appeal to the sad circumstances of

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the present times make the decree more valid, according to the speaker.

[*Latin ed. p. 244*]

244 ANNECIEN. Concerning the conditions in Gaul; for it is clear that countless difficulties are opposed to the Christian education of children, and because the first Communion is, at the same time and by necessity, a preparation for the entire Christian life, and an opportunity which will never be renewed. Since all these things suggested that no one should be admitted to Holy Communion unless he were sufficiently, indeed abundantly, instructed, and unless he had previously undergone a long period of ecclesiastical catechesis: and moreover, all these things suggested that the parish priests should receive the children with all diligence, and educate them, and prepare them for the Holy Sacrament, and admit them before the enemy had sown tares in them. For the divine law compels the faithful to partake of the Body of Christ if they wish to live in Christ (John, chapter 1, verse 58), that is, to receive the antidote by which they may be freed from sins and preserved from mortal sins, as stated in the Council of Trent, Session 13, chapter 12; and this reason, as explained by Thomas, part 3, question 80, article 9, is so strong that it suggests that this sacrament should not even be denied to those who have a weak use of reason. Therefore, all the more, it seems that it should not be refused or delayed to children, as De Segur teaches in his work, *De la très-Ste Com.*: "The danger of bad habits presents itself immediately (after the attainment of the use of reason). - As for the reality of mortal sins in young children of seven, eight, and nine years, it is a fact so evident, so unfortunately certain, and I will add, so unfortunately frequent, that one should have no experience of children to doubt it." To this are consonant the words of Abrate in his work, *Lo spirito del parroco*, volume 2, where he teaches the pastors of souls: "Although it is necessary for you to consider whether you should admit anyone to Holy Communion unless you are first certain, through a prior examination, of his moderate instruction in necessary matters, nevertheless, refrain from rigidity towards those who, by demanding too much from the children, and subjecting them to excessive tests beforehand, prevent them from being admitted..."

[*Latin ed. p. 245*]

ANNECIEN. In those times, the evil spirit already pervades the souls of many. If the First Communion were to be received at the proper age, greater fruits of Catholic piety would be obtained, and a stronger impetus to good works would arise. In our days, because vice is so prevalent, a remedy must be anticipated to prevent its effects; thus, as soon as a young person reaches the age of sufficient understanding of what he is to receive, let him be admitted to the true comfort of the soul, and let the growth of grace be safely fostered, which, if delayed, allows the corruption of souls to

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grow insidiously. Cruel is the pastor, if he is present, who would deny this great benefit to the tender age of his parishioners! And indeed, because of the prolonged and often delayed First Communion, it easily happens that children approach the Eucharistic table not only weary from this long preparation, but also infected with the seeds of vice and carried away by the flames of passion, after having already tasted deeply from the chalice of seductive pleasures; therefore, they may perhaps find the bread of angels distasteful, and, bearing a sad countenance, no longer intend to return. Furthermore, if children receive their First Communion while still at school, at a tender age, under the protection of their parents, they can easily, on solemn days or Sundays, be led to the sacred table, and thus gradually become accustomed to this sacred communion; whereas, if they receive their First Communion only after the age of twelve, and simultaneously begin their studies, because in Gallus children are sent to school until that age, it will also be difficult for children, especially boys, to continue to attend the sacred synaxis, because they are then engaged in new and laborious pursuits. Therefore, the Provincial Council of Albiense, title 5, on First Communion, rightly taught: "In some parishes, many boys and girls of both sexes are often found who have not yet tasted the Eucharistic bread, although they have long since reached the age of discretion, which rarely happens without the negligence of the pastors. From this negligence, it often happens that young people, especially..."

[*Latin ed. p. 246*]

246. Some [people] go through life, or at least their youth, without receiving the sacraments, or they do not approach them until they are steeped in countless sins and the mire of vices. Therefore, we command the parish priests to watch over the children with special care, to instruct them diligently and to prepare them properly so that they may, as soon as possible, approach the sacred table, that is, at that age when they can discern the Body of the Lord and when they still retain, as much as possible, their innocence, since this age is generally within the tenth year. And the Provincial Council of Toulouse in the year 1850, decree 72: "Let the children be admitted to the first reception of this Sacrament as soon as the parish priests or confessors have judged them to be endowed with due piety and sufficient knowledge of the mysteries of the faith." And the Provincial Council of Auch in the year 1851: "Let the pastors of souls take care that, through their negligence, the first Communion is not delayed, since it is expedient to ward off the attacks of concupiscence." But the matter is completed by a letter from Cardinal [Luigi] Em. Secretary of State, addressed to the Bishops of Galliae on March 12, 1866, which is cited in Analecta iuris pontificii for the year 1867, where the following is read concerning this matter: "Since it has been ascertained how much the frequent reception of the sacraments of Penance and the Eucharist contributes to the preservation and protection

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of the innocence of children, and how much the constant use of them wonderfully contributes to fostering, strengthening, and increasing the piety of young hearts, to which a great zeal is infused for extending the acts of our holy Religion. This method, of denying the sacraments of Penance and the Eucharist to children, is vehemently disapproved of by the Holy Father, and the attention and solicitude of the bishops are aroused to ensure that they follow the norm of admitting children to the frequent reception of the sacraments." And this concerns the decree by which the age for admitting children to their first Communion is specified. Regarding the day that the Bishop sets, the thirteenth day before June, the speaker cites from Benedict XIV, Instructiones ad clericos Romanos, March 18, 1745, from St. Charles Borromeo, Notificationes, 2, page 73, and from St. Alphonsus in one of his prescriptions.

[*Latin ed. p. 247*]

ANNECY. There are 247 clergy, and according to the decree of St. Francis de Sales, from the Council of Trent, Session 22, Chapter 8, number 4, it is to be taught that those who are judged capable of receiving the Eucharist should, with special care, be instructed during the forty days preceding Easter, so that they may be able to fulfill the precept of the Church during the Easter season. This opinion and practice are most just, and were also accepted in the Diocese of Annecy; for there, the First Communion was administered only on Sunday, during the week of the Passion. Furthermore, this cannot be disturbed without harm, as the advocate argues. For in those regions, families have two residences, a winter one and a summer one; and while they live on the plains during the winter, they return to the mountains in the month of May, where they graze their sheep. The postponement of this day cannot be justified on the grounds that, during the winter, the cold often prevents children from attending catechism; for the Bishop himself shows the contrary, when he orders the children to attend catechism twice a week in the months of November, December, January, and February. And since even young people are required to attend school by civil laws, nothing prevents them from attending Mass before school, or from meeting in church between the morning and afternoon sessions. Therefore, the parish priest, from the Feast of All Saints until Easter, can instruct his parishioners in catechism four or five times a week. Nor does it matter that the Bishop allows the parish priests to admit children to Holy Communion even on other days; for 1. this is almost like a punishment, since admission is ordered to be made without any solemnity whatsoever, and 2. because this permission seems illusory; for it applies to those who, having already completed the course of catechism, and having reached the age of twelve, have not been able or have not wished to approach the altar on the appointed day, and refuse to wait until the following year. With these considerations, the advocate concludes that the law seems very harsh,

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because even those in need of spiritual sustenance are prohibited from receiving the sacraments, and children are prevented from fulfilling their Easter duty.

[*Latin ed. p. 248*]

248 ANNECY. Those hindered by the precept: Neither will there be only children who will stand in the final judgment, and who must answer to God, according to the words of St. Francis de Sales, concerning sinners who are being urged and approached: "Wretched ones, why do you waste away, dying so abundantly and contrary to the commandment, the fruit and the flesh of your life?"

RIGHTS OF THE BISHOP. On the other hand, the Bishop has added a patron, who, concerning the matter, 1. considers the spiritual jurisdiction of Bishops, both in the external forum and in the internal forum, to be exercised by their own right throughout the diocese, and that all the faithful, and even the pastors of souls in the churches, whether regular or not, are subject to their jurisdiction, visitation, and correction, as is stated in unison by DD. apud Bouix De Episc. cap. 3 tit. 1, and Ferraris v. Episcopus art. 6 n. 125. Therefore, as Barbosa De off. et potet. Episc. p. 2 alleg. 1 n. 5 states, "It is a common axiom that Bishops in their dioceses can do everything that the Supreme Pontiff can do in the entire world, except for those things specifically reserved." Therefore, according to the patron, there is no doubt that the Bishop of Annecy is free to establish those things that pertain to the Christian education of children and the administration of the most sacred sacraments; especially since Benedict XIV, in Const. *Et si minime*, 42, encouraged the vigilance of Ordinaries in promoting the Christian institution, and warned them to have the primary role in this matter. And indeed, although our Redeemer exhorts us in general to tireless vigilance, He nevertheless commands a special solicitude to the leaders of the people, that is, the Bishops: for He signifies a faithful servant and head of a family, who cares for the advantages and benefits of the people entrusted to him: and therefore, it is his duty to have care of the Lord's flock, and to teach by means of which the sheep may be led more safely and easily to the pastures of eternal salvation. - But 2. the patron states that the decrees are not only legitimately given, but also prudently and wisely made. And here he mentions how grievous is the situation of the present Gallican Church.

[*Latin ed. p. 249*]

ANNECY. 249. The situation is such that, in schools and gymnasiums, through villages and towns, young people are exposed to impiety and disbelief through public and private examples, scholastic works, and journals, and they are unable to receive any salutary remedy from their teachers. Therefore, it follows that the care of pastors must be diligent, constant, and filled with industry, so that they may be able to properly educate the minds

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of young people and to strongly protect them against the snares of their adversaries. However, they will not be able to accomplish this unless they postpone the first Communion until the age of puberty. For it is the custom, and a most deplorable one, that once young people have been admitted to the sacred table, they withdraw from catechesis and consider themselves exempt from it. Therefore, the regulation which respects the age for admission to the sacred Synaxis seems just and prudent. But no less important is the other regulation which assigns a day for this purpose. It is known that in Gallus, as elsewhere, the admission to the Eucharist is usually celebrated with solemnity by the great church, for young people and their parents. Furthermore, to assign a month for this purpose, dedicated to the Blessed Virgin, and to set aside a time free from agricultural labor and the harvest, seems wise and prudent. Moreover, the necessity and suitability of laws, from the Antistite of Annecy, are also confirmed by the fact of the Bishops of all of Gallus. Let the report of the Annecy Prelate be heard, in which he discusses this custom of Gallus, and also adds other things which directly demonstrate the necessity of these regulations, considering the actual condition of Gallus. "It would suffice," he says, "to recall that the decrees concerning the instruction of children in the Catholic faith, issued by all the Antistites of Gallus, have been promulgated for thirty years or more, or even in the present year; therefore, given the unprecedented conditions in which ecclesiastical affairs are situated with regard to civil administration in Gallus, certain laws, opportune and specific, must be introduced." "Concerning those matters that pertain to the designated day of the First Communion, it must be observed that, after the most grievous..."

[*Latin ed. p. 250*]

250 ANNECY. In Galliae, durante la rivoluzione alla fine del diciottesimo secolo, la solennità della Prima Comunione e della partecipazione comune dei bambini alla Santa Messa, tra le principali feste dell'anno, fu ripristinata in tutte le diocesi delle nostre regioni, e fu una festa non solo per i bambini, ma anche per i genitori; infatti, in molte parrocchie, molti uomini non disdegnavano di varcare le porte della chiesa solo in quel giorno della Prima Comunione. E questa solennità, sia nella diocesi di Annecy, sia nelle altre chiese di Gallia, veniva celebrata verso la festa del Corpo di Cristo. Tuttavia, gradualmente, nella diocesi di Annecy, si è diffusa la consuetudine di celebrarla la domenica di passione del Signore; e questa pratica più recente offre un notevole vantaggio ai parroci: infatti, le scuole cristiane, essendo chiuse nel primo giorno del tempo pasquale, godono poi, dalla fine dello stesso tempo fino alla festa di Ognissanti, di piena libertà e di perfetta quiete. E altrove: "Per quanto riguarda l'età determinata prima della quale non è permesso a un bambino di accedere alla Comunione, è sufficiente dire che, se questa disposizione venisse abolita, si distruggerebbe completamente l'unità, con tanto sforzo da parte dei Vescovi, per fare in modo che la

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futura generazione sia cattolica e non atea. Infatti, le condizioni in cui oggi si trova il gregge di Cristo non sono solo diverse da quelle in cui si trovava quattro o otto secoli fa, ma sono completamente contrarie e opposte... non mancano molti sacerdoti a questo loro gravissimo compito; ma i genitori dei bambini, e anche i maestri delle scuole, e persino lo stesso governo della repubblica, cercano di fare in modo che la Prima Comunione sia amministrata ai bambini il più presto possibile, affinché, fin da quel giorno della Comunione, i bambini non siano più tenuti a frequentare l'istruzione cristiana." Infine, il Vescovo di Annecy conclude: "Per quanto riguarda ciò che riguarda l'insegnamento della dottrina della fede, non ho seguito un'altra via, non ho utilizzato altri mezzi, che gli altri Vescovi di Gallia; e i Vescovi di Gallia, introducendo nuove leggi sulla Prima Comunione dei bambini, non hanno fatto altro che adattare la disciplina delle loro diocesi alle ferite del tempo o alla necessità."

[*Latin ed. p. 251*]

ANNECY. 251. And indeed, all these things are confirmed by the Most Reverend Cardinal Lavigerie in a letter addressed to the matter at hand. Furthermore, that "much weight must be given to the judgment of Bishops" is not only stated by Ferraris in *Dissertations*, but also taught by the Blessed XIV in the constitution *Cum Illud*, prescribing that "testimony should not be given to that pastor to whom the divine mandate has been entrusted to recognize his sheep." Finally, 4. the author demonstrates that the disputed prescription cannot be said to be substantially contrary to the canons, but rather, is in conformity with them. For Innocent III, in chapter 12 of *De Poenitentia*, although he commands all the faithful to communicate after they have reached the age of discretion, he nevertheless adds, "unless, perhaps, with the advice of their own priest, for some reasonable cause, they have decided to abstain from such communion for a time." This is in accordance with the prescriptions of the Councils of Lateran IV and Trent. From this, it is clear that the age at which the sacraments should be received for the first time is not strictly defined by the canons; nor is it defined by the doctors; who, indeed, according to what is stated by Blessed XIV in book 7, chapter 12, paragraph 2, of *De Synodo Dioecesi*, dispute among themselves as to when sufficient discretion is present to receive the Body of Christ. And it is the opinion of the Pontiff that this occurs – within the tenth and fourteenth years of age, according to Suarez, or in the eleventh or twelfth year, according to St. Thomas, 4 *dist.* 9, article 4, ad 3. Therefore, it is the case that even in Rome, boys of twelve years of age are sometimes admitted to their First Communion. With these things noted from here and there, the purpose was to resolve the doubt as to whether the decrees of the Bishop of Annecy should be confirmed or rejected in this case. RESOLUTION. The Sacred Congregation, having considered the circumstances of the place and time, on July 21, 1888, decided to respond:

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"Considering the circumstances of place and time, affirmatively, in accordance with the manner." FROM WHICH YOU MAY GATHER. I. Bishops especially represent the faithful servant, the head of the family, to whom...

[*Latin ed. p. 252*]

252. It is the duty and advantage of pastors to promote the care of the flock entrusted to them, and to provide means by which the sheep may be led more safely and easily to the pastures of eternal salvation.

II. It is a common axiom that Bishops in their dioceses can do all things that the Supreme Pontiff can do in the entire world, except for those things specifically reserved.

III. Therefore, it does not seem unreasonable that they should also establish things pertaining to the Christian education of children, since, according to the sacred canons, they are to be stirred up and reminded that they have a principal part in the Christian instruction.

IV. Doctors and Pope Benedict XIV teach that the judgment and prudence of Bishops should be followed. And the aforementioned Constitution states, "It is not to be considered a sign of that pastor who, by the divine mandate, does not recognize his sheep."

V. Although Pope Innocent III, in chapter 12 of *De Poenitentia*, commands all the faithful to receive Communion after reaching the age of discretion, it is nevertheless permissible, unless perhaps by the priest's own counsel, for a just reason, to abstain from such Communion for a time.

VI. The sacred canons do not define the age at which the first Holy Eucharist should be received; and the Doctors do not agree among themselves regarding the age at which one has sufficient discretion to receive the Body of Christ; while Pope Benedict XIV believes that this should occur within the twelfth or thirteenth year of age.

VII. In this matter, the prescription of the Bishop does not seem to be contrary to the sacred canons; but rather, it is in some way sought by the circumstances of place and time, and substantially in accordance with the practice of other Bishops of the same nation.

[*Latin ed. p. 253*]

25. FROM THE CONGREGATION OF RITES: A decree whereby plenary indulgences are granted to the faithful who, on the 31st day of the coming December, gather together to offer prayers to the most sacred Heart of Jesus, etc. Dated 1 November 1888. THROUGHOUT THE CITY AND THE WORLD. Many Catholic archbishops of the Sacred Order have recently presented supplications to the Most Holy Lord, our Pope Leo XIII, requesting that all the children of the Church, who this year, as the end of the same year approaches, have everywhere celebrated with unanimous and most fervent devotion the sacerdotal jubilee of the same Most Holy Lord, may again gather together to offer prayers to the Most Sacred Heart of Je-

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sus, from which flows abundantly the divine mercy upon all. Furthermore, these supplications and prayers, which are the most excellent demonstration of piety towards God, and of filial obedience towards the Vicar of Jesus Christ on earth, having been reported by the Secretary of the aforementioned Congregation of Rites, His Holiness, being pleased, has deigned to declare that He most approves and commends that, in the Metropolitan Churches, Cathedrals, Collegiate Churches, Parochial Churches, and others, with the consent of the Most Reverend Ordinaries, on the last day, that is, the 31st day of the coming month of December, the Most Holy Sacrament of the Eucharist remain exposed for a time to the public adoration of the faithful; that five decades of the Rosary of the Blessed Virgin Mary be recited, and finally, after the singing of the Ambrosian hymn and the litany, — "Grant us, we beseech Thee, O God, and let Thy Collects for the Pope and for the people be blessed with the Divine Host." To each true Christian who has been duly confessed and has received the holy Communion, who participates in such public...

[*Latin ed. p. 254*]

254 EX. S. C. RITUUM: Those who have piously participated in the prescribed ceremonies, and who, for the purpose of offering thanks as mentioned above, and also for the tranquility and peace of the Holy Church and the Apostolic See, and for the conversion of sinners with faith and confidence, have prayed for the most sweet Heart of our Savior Jesus Christ, are granted, by the Most Blessed Father, a plenary Indulgence, in the usual form of the Church, applicable also to souls detained in Purgatory. Regarding the petition, which was presented simultaneously by the aforementioned sacred Prelates, concerning the elevation of the annual feast of the Most Sacred Heart of Jesus throughout the Church to the rank of a double first class feast, the Holy See reserves judgment. On the solemn day of All Saints, November 1, 1888.

A. CARD. BIANCHIS.

R. C. Prefect.

LAURENTIUS SALVATI.

S. R. C. Secretary.

EX S. CONG. INDULGENTIARUM SANCTI SEVERI: Concerning the Gregorian Triennium of Masses. The general vicarius of the Diocese of San Severo humbly presents this to the Sacred Congregation for Indulgences and the Most Holy Relics: In this city of San Severo, the pious practice instituted by Saint Gregory the Great of celebrating Masses for thirty consecutive days to bring immediate solace to the souls detained in Purgatory

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has flourished to such an extent that some living individuals now request to have these Masses celebrated in anticipation for their own benefit. Nor do the priests refuse to celebrate them, understanding that they will fulfill the obligation undertaken according to the Gregorian institution, and even more so because all believe that this pious...

[*Latin ed. p. 255*]

From the practice of S. G. Indulgentiarum 255, no Indulgence is attached, not even that of the altar, which is privileged. However, a serious doubt has arisen as to whether the Gregorian Mass, which from ancient times has been instituted for freeing souls from the pains of Purgatory, can also benefit the faithful still living. Furthermore, in the published work of R. D. Louvet, which was translated from French into Italian by Giuseppe, entitled "De Purgatorio secondo la rivelazione dei Santi sub finem C. XVIII," page 291 (edition of Turin), the following is written: "It is generally believed that the Holy Pontiffs have granted a plenary Indulgence for this pious practice of the Mass of St. Gregory, so that, unless the justice of God presents an obstacle, one may reasonably hope to obtain the liberation of the soul for which the divine sacrifice is offered."

(1) Hence, the solution to the following doubts is sought: I. Are the Gregorian Masses, which are called by that name, anciently recognized and approved by St. Gregory, and do they grant some Indulgence for the living, as is conceded for the dead, according to the aforementioned work of R. D. Louvet? And to this, the answer is affirmative. II. For what actions are these Masses said? III. Are they said only for the dead, or also for the living? IV. If the aforementioned Masses cannot be said for the living, to what extent is the Indulgence granted?

(1) These words in Latin are: "Creditur autem generaliter, a Summis Pontificibus concessam esse huic piae praxi, Missarum s. Gregorii, Indulgentiam plenariam in forma Iubilaei; ita ut, nisi iustitia Dei obstaculum ponat, fundatam haberi liceat spem obtinendi liberationem animae, pro qua offertur divinum sacrificium."

[*Latin ed. p. 256*]

256. The priest shall be held accountable who, in good faith, celebrated the Holy Office of Indulgences for the living who requested them. Furthermore, the Sacred Congregation, which presides over Indulgences and sacred Relics, having heard the opinion of one of its Consultors, responded as follows: To I. Negatively. To II. Not approved, and therefore not valid. To III. Regarding IV. It was provided that the intention of anticipating the Divine Mass should not be considered a liberation. On the 13th of the month, a special acceptance of thirty punishments was granted; this practice of the Congregation, it is clearly recognized, was a pious one, especially in the year 1884, but from the foregoing, it is understood that the priest who

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offered the Indulgence, trusting in the mercy of God, believed that he could, during the celebration of the Masses, offer suffrage for the living. Given in Rome, from the Secretariat of the aforementioned Sacred Congregation, on the 24th of August, 1888. SERAPHINUS CARD. VANNUTELLI, Prefect. L. S. ALEXANDER, Bishop of Oenus, Secretary.

(1) See *Recole*, Volume XVI, page 508, where the question concerning the Gregorian Triduum, the altar of St. Gregory on the Caelian Hill, and Gregorian altars of the same kind, is discussed.

[*Latin ed. p. 257*]

257 Letters from His Holiness Pope Leo XIII to the Bishops of England, in which he congratulates them on their unanimous agreement in condemning the laws enacted by the Italian government against the clergy.

Beloved Sons and Brothers, with the Apostolic Blessing and salutations. Although it was neither doubtful nor unknown to Us that you shared the sentiments of the other sacred prelates who gravely condemned the specific laws against the clergy enacted by the Italian government, ostensibly to punish alleged crimes; nevertheless, we received the letters in which you jointly testified to this agreement, as if this matter had been unexpected to Us. For from them, the unity of spirit which divinely moves the pastors of the Church shines forth more and more, so that they may be perfect in the same sense and in the same judgment, and it becomes more evident that We, in condemning those laws, were not moved by hatred or envy against those who hold the highest office in that region, but rather, for the dignity of Our ministry, We were defenders of the eternal law, which commands what is right and condemns what is contrary to it. Furthermore, in your letters, we received consolation from what you wisely observed concerning the force and nature of the new laws, which are contrary to the morals of peoples who have been cultivated with greater humanity, and concerning the injury that is inflicted not only on the Church, but also on the rights of free citizens, even though they are expressed in words. Finally, we received no small comfort from the fact that we perceived that you, with the same zeal with which you have previously shared in Our congratulations, willingly came to share in Our sorrow, and with all your strength you strive to help Us. Indeed, by boldly asserting Our rights before men, and by offering supplications to God, you seek that the united support and authority of all who hold right opinions may deter those who are hostile to religion from their undertakings, and that God, with His powerful command, may restrain the waves that buffet the Church. In the meantime, with a heart full of gratitude for your efforts and services, we pray to God to abundantly bestow all grace upon you, and We impart to you, Our Beloved Sons, Venerable Brothers, as well as to the clergy and faithful entrusted to your care, Our Apostolic Blessing, a testament of Our steadfast love.

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Given at Rome, near St. Peter's, on this 16th day of November, in the eleventh year of Our pontificate.

LEO XIII, Pope.

Acts, Volume XX, page 445, line 17.

[*Latin ed. p. 258*]

258 LETTER of the Most Holy Pope Leo XIII to the Archbishops and Bishops of the United States: in which he commends the Italian citizens migrating there out of necessity. LEO P. XIII. Venerable Brothers, greetings and the apostolic blessing. How grievous and calamitous is the condition of those who, year after year, migrate from Italy to the regions of the United States in large numbers, seeking means of sustenance, is so well known to you that it is unnecessary for Us to explain it at length. Indeed, the evils that afflict them are so clearly perceived by you, and have been lamented by many of you in letters sent to Us on more than one occasion. It is to be lamented that so many poor citizens of Italy, compelled only by necessity to change their place of residence, often fall into evils far more serious than those they sought to escape. And frequently, to the miserable toil of various kinds, which consumes the strength of the body, is added the ruin of the soul. The very first journey of those who emigrate is fraught with dangers and misfortunes: for many fall into the hands of unscrupulous men, of whom they become almost slaves, and are crowded together on ships, treated inhumanely, and gradually driven towards the corruption of their nature. When they finally arrive at their intended destination, ignorant of the language and customs of the place, and accustomed to daily labor, they are exposed to the snares of the wicked and to the power of those to whom they have surrendered themselves. But even those who, through their own industry, have been able to provide sufficiently for their livelihood, nevertheless, constantly living among those who devote everything to gain and their own advantage, gradually lose the noble sentiments of human nature, and learn to live the life of those who have fixed all their hopes and thoughts on earthly things. To this are added the common temptations of greed, and the deceptions of sects, which abound here, offend religion, and lead many onto a path that leads to ruin. And among these evils, the most grievous thing is that, in such a large number of people, in such vast regions, and in such difficult circumstances, it is not easily possible to provide them with that salutary care which the ministers of God ought to offer, who, speaking the Italian language, might impart the word of life to them, administer the sacraments, and provide the necessary assistance, by which their spirits might be raised in hope of heavenly blessings, and the life of the spirit be sustained and strengthened. Hence, in many places, there are very few who have a priest present at their deathbeds, while there are many for whom a minister is lacking at their birth, to administer the laver of

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regeneration: more-

[*Latin ed. p. 259*]

LETTERS 259. Those who, without regard for the laws of the Church, enter into marriage are, as a result, similar to the ancients, and thus, among this class of people, Christian morals are forgotten, and the worst vices flourish. Considering all of this, and grieving for the miserable fate of so many people, whom we know to be like sheep abandoned by the shepherd, wandering through dangerous and hostile places, and also considering the charity and instructions of the Eternal Shepherd, we have deemed it our duty to offer them all the help we can, to prepare wholesome pastures for them, and, in every way possible, to promote their good and salvation.

We have undertaken this task with all the more eagerness, because the charity for those people, who, like us, are under the same jurisdiction, makes them more receptive to it, and because we are certain that your studies and helpful efforts will never fail to support us. Therefore, we have taken care that in the sacred Christian Council, a consultation be held on this matter, and we have instructed it to seek out and diligently examine all remedies by which so many evils and inconveniences can be eliminated, or, if that is not possible, alleviated, and to propose to us what is most beneficial in this regard, considering both the salvation of souls and the alleviation of the troubles of the migrants, as far as possible.

Since the root of the greatest evil lies in the fact that these unfortunate people lack the ministry of priests, through which heavenly grace is imparted and increased, we have decided to send more priests from Italy to that place, who are accustomed to speaking with their countrymen; they will teach the doctrine of the faith and the precepts of the Christian life to those who are ignorant or neglectful, they will administer the salutary sacraments among them, they will foster a growing devotion to religion, and they will promote human kindness, and finally, they will encourage all, through counsel and assistance, and they will care for them with all the duties of the priestly office.

In order that this may be accomplished more conveniently and effectively, through our letters dated December 17th of the previous year, bearing the Fisherman's seal, we have established the Apostolic College of Priests in Placentia, under the Episcopal See, with the Most Reverend Father John Baptist, Bishop of the Placentines, in charge, so that ecclesiastical men, whom the charity of Christ urges, may come from Italy, that they may be instructed in their studies, trained in their duties, and disciplined in such a way that they may diligently and successfully fulfill their mission among the scattered citizens of Italy, and that they may become suitable dispensers of the mysteries of God. Among the students of this College, which we wish to be considered as a seminary for the ministers of God for the salvation of the Italians living in America, there

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will also be young men from your regions, of Italian parentage.

[*Latin ed. p. 260*]

260 We desire that those born, received, and instructed, if called by the Lord's providence, may be initiated into the sacred order, so that, afterwards, increased in the priesthood and persevering in their vocation, under your pastoral authority, they may fulfill all the parts of the Apostolic ministry for which they have been chosen. And we do not doubt that these individuals will also be received by you with paternal charity, and that they will obtain suitable opportunities to practice the sacred ministry for the benefit of their fellow citizens, upon the advice of the parish priest; for they will come to you as auxiliary forces, so that, under the authority of each of you, in whose diocese they are located, they may labor in the sacred military service. Indeed, at the very beginning of this undertaking, these aids will not be sufficient in proportion to the needs and the times, nor will those who are to be sent be able to be equal in number to the needs and the number of the faithful, so that priests can be established in each and every place, even the most remote, to care for souls. Therefore, we consider it best if, in the dioceses which are more abundant with immigrants from Italy, common residences for priests are established, from which they may then depart to travel the surrounding region and cultivate it with sacred expeditions. As to how, and in what places, these may be most suitably established, it will be for your prudence to decide.

— All these things which we have deemed to be of our Apostolic providence, we have taken care to communicate to you in these letters. If any of you should discover, either through their own sense and judgment, or through consultations with their brothers, that something further could be provided by us for the benefit and comfort of those for whose sake we are writing, let them know that they will have pleased us if they diligently report this to the Most Holy Council for the Propagation of the Faith. From this work, which we have undertaken for the care and protection of many souls, who lack all Catholic comfort, we promise abundant fruits, especially if, as we trust, those who are devoted to the faith will provide the resources, studies, and support necessary to sustain and protect it.

— Moreover, we implore the most benign God, who desires that all men should be saved and come to the knowledge of the truth, that He may look favorably upon these endeavors, and grant them prosperous growth. We impart to you, Venerable Brothers, the Apostolic Benediction, a testament of our most intimate affection, to you and to the entire clergy and faithful under your care, that you may devoutly offer it to the Lord. Given at Rome, near St. Peter, on the tenth day of December, in the year 1888, in the eleventh

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year of Our Pontificate. LEO XIII, Pope.

[*Latin ed. p. 261*]

26. FROM THE HOLY CONGREGATION OF THE COUNCIL, DECREES ON MARRIAGE, dated December 12, 1885, and June 16, 1888. Session 24, chapter 1, Concerning Impediments to Marriage. SUMMARY OF THE CASE. Angela Sciuto, from the town of Scordia, in the Diocese of Calatayeron, sixteen years of age, having entertained adulterous affections for Francis Basso, contracted marriage with his brother, Nicholas, of the place Militello, on June 4, 1854, in the parish church of Saint Roch; the marriage banns having been announced from March 28. After the sacred rite was performed, the bride, scarcely having left the church, fled, and, as if in a state of madness, ran through the fields, and threw herself into a deep stone pit, in an attempt to take her own life. Being rescued, barely alive, she was taken back to her parents' home, where, five months later, she gave birth to a son, conceived from the adulterous union. Her parents then began to treat her more harshly, and moreover, they moved a stone, in an attempt to force her to cohabitate with the groom, Nicholas. But this was entirely in vain, since she had fled to the adulterer Francis, with whom she had already borne thirteen children. Nicholas, who had never lived with the bride, upon returning to his homeland, took another woman as his concubine, and from her also had children. Under these circumstances, in order to heed the voice of their conscience, both Angela and Nicholas appeared before the Curia of Calatayeron on January 9, 1883, requesting that the marriage be declared null, either because Angela was compelled by force and fear, or because of an impediment of affinity arising from the illicit union that Angela had had with Nicholas's brother before the marriage. The Episcopal Curia, after completing the proceedings, in which, however, more details are needed concerning the substance of the matter, rendered a judgment in favor of the nullity of the marriage.

[*Latin ed. p. 262*]

262 CALATAYERONEN. By a decree, dated July 18, 1883, it was declared invalid, because, as it appeared from the testimony of witnesses, the marriage had been contracted illicitly, and there was not sufficient evidence of force and fear. Having received this decision, both parties presented a petition to the Most Holy Prince, imploring him to grant a dispensation concerning the valid, but unconsummated, marriage, and concerning the impediment of the crime of promise of future marriage, which had been made with Francis, who was already married. After the petitions were received, it was ordered that the cause be examined economically, with the opinions of two Consultors and the observations of the defender of the bond, made in accordance with his office.

SYNOPTIC DISCUSSION: THEOLOGICAL OPINION. The theologian

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considered that there were grave reasons which suggested that the present marriage should not be declared valid, and he first discussed the matter of its nullity, and then spoke of the possibility of a dispensation.

Regarding the first point, the theologian asserted that the marriage was null from two grounds: because it was contracted by force and fear from Angela, which are impediments, and because of the impediment of affinity arising from the illicit union.

Regarding the impediment of force and fear, he noted, citing Cosci, *De separ. Thori coniugalis*, lib. i, cap. 8, that in order for the bond of marriage to arise from the consent of the contracting parties, full consent, complete liberty, and security are required, and that where there is fear, consent is lacking. Furthermore, he stated that the opinion of St. Thomas is the same, who in the *Supplementum*, quaest. 47, art. 3, teaches that in marriages celebrated under unjust force and fear, there is not absolutely and in every respect consent; but the Church judges that such consent, being extorted, is not sufficient to effect a marriage; *loc. cit.*, in response to the second argument. However, as the marriage contracted by fear...

[*Latin ed. p. 263*]

CALATAYERONEN. It is considered, by the unanimous opinion of Theologians and Canonists, that for a marriage to be declared null, it must be the case that 1. there is a grave fear, 2. that this fear is unjustly inflicted, 3. that it originates from an external source, 4. and that it is directly directed at extorting consent to the marriage. In practice, it is a very delicate and complex matter to determine whether such conditions, and especially the first condition, are met; and therefore, according to Sánchez de Matrim, book 4, section 5, it should be left to the judgment of the judge. With these legal principles in mind, it is asserted that Angela was coerced into consenting to the marriage which she contracted with Nicholas; and this can be clearly deduced both from the preceding events and from the subsequent events following the marriage. Indeed, it is stated that from the sworn testimonies of both spouses, it is clear that Angela not only did not have any affection for Nicholas before the marriage, but rather had a very strong aversion to him. And this great aversion continued even after the beginning of the marriage, not only because she attempted to leave him on the day of the wedding with the intention of causing herself death, but also because she never lived with her husband, but instead returned to Francis, from whom she bore thirteen children. Given this strong aversion of mind, it is reasonable to presume that the marriage was not freely entered into, as taught in St. Rota's Decision 326, before Louis, number 7 and following, and in Cosci De Separatis, book 1, chapter 8 and following. Furthermore, it is observed that the sworn testimonies of both Angela and Nicholas show that Angela was forced by her parents, through threats and beatings, to enter into the marriage. These sworn testimonies of the spouses are confirmed by the

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testimonies of two witnesses and others who were examined regarding the good qualities and the affection with which Angela's parents treated her; so that, apart from the coercion to enter into the marriage, these reproaches and beatings could not have had any other cause. Indeed, there is another witness, Francisca Agnello, who...

[*Latin ed. p. 264*]

264 CALATAYERONEN. It was determined that threats and coercion had been employed to obtain consent for a marriage, which was to be celebrated the following day with Nicholas, and that nothing was being done; that two witnesses testified about the threats, the bad temper, and the beatings, and that the parents were doing this to force the marriage. It is observed that, besides the fact that the parents cannot assign any other cause for the persecution of the daughter, the fact of the flight that immediately followed the celebration of the marriage sufficiently demonstrates that those persecutions were directed at obtaining consent for the marriage. But, setting aside these matters, it is further observed that there are at least some proofs in the matter through witnesses; there are very strong presumptions from the circumstances that the marriage was contracted by Angela under duress and fear. There is no witness to the contrary, who would show that the marriage was freely and spontaneously contracted. With these things established, it is noted that the axiom of Innocent is known, in Cap. Super hoc de renunciatione, n. 2, where it is stated, as Sánchez de matrim. I. 4, disp. 37, n. 1 and following, reports and explains: "Two witnesses testifying to fear are to be believed more than a thousand affirming spontaneous will." And the reason is, because those who testify to fear, could have perceived what they assert with their bodily senses, while those who testify to spontaneous will, since the matter is a hidden thing in the mind, could not have perceived it with their senses. Indeed, the words of Innocent: "two witnesses, etc.," are amplified by Mascardo de probat, conclus. 1057, n. 5, so that it is true "even if only one witness were to testify to fear, because they would be believed more than a thousand denying it, or affirming spontaneous will... especially when there are presumptions in favor of it." In this case, there is no witness denying the fear, or affirming the spontaneous will. On the contrary, there are presumptions that support the witnesses who assert that fear was present. How strong these presumptions are in this case, 3.

[*Latin ed. p. 265*]

CALATAYERONEN. 265, considering the fear, drawn from the statements and especially from Angela's aversion towards Nicholas. Therefore, he concludes that "fear is presumed when, after an act has been committed, the agent flees, because then it is presumed that he acted against his will." Mascard, *de probat*, n. 46, conclusion 1055. To this, Menochius adds *lib.

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3, praesumpt. 4, n. 5 et 18*, and Peter Barbosa in *Cons. 24, n. 7*. Regarding the nullity of marriage due to the impediment of affinity arising from an illicit union, the theologian observes, first, that the existence of this impediment can scarcely be demonstrated through evident proofs, both because it involves ascertaining a fact that occurs secretly and without witnesses, and also because, as Coscius notes in *de separat, thori, lib. 2, e. 18, n. 8*, "it often happens that this opposition of affinity, especially arising from an illicit union, is brought about to invalidate the marriage either out of envy or out of malice." From this, Ursaya, in *tom. 3, discept. Ecclesiast. part. 2, discept. 9, n. 11 et seq.*, points out that it is not necessary to demonstrate the union through direct proofs, nor that witnesses should testify to it without any exception; but rather, that it can be proven not only through presumptions and conjectures, but also through witnesses who offer some exception. These presumptions and the testimonies of witnesses must be joined together, according to the common saying: "What is useless individually, is helpful when united." With these premises, to demonstrate the illicit carnal intercourse of Angela with Francis before her marriage with Nicholas, he presents first the sworn testimony of Angela herself, who, whether during her judicial questioning or when she presented a petition to the Most Holy Lord for a dispensation regarding the valid marriage, asserted that she had relations with Francis before the marriage, and that she conceived a child from him. Angela's confession is corroborated by the testimonies of witnesses who saw both Carmelo Greco and Joseph Frolio, and also...

[*Latin ed. p. 266*]

266 CALATAYERONEN. Joseph Vitalis, whose testimonies are found with such specific and defined circumstances, either of place or of time, that it is not permissible to doubt their depositions. However, he continues, that the aforementioned witnesses are singular, but their singularity is of a type that jurists call "supportive" or "cumulative," insofar as they present different things, which nonetheless contribute to the same proof. The object of the depositions of these witnesses is the same, namely, the carnal intercourse had by Angela with Francis before marriage. And the second witness testified multiple times about the carnal intercourse; the first did not precisely about the carnal intercourse, but about such intimacies that usually precede it, and about the fact that they were alone together after the illicit act, hiding themselves. Regarding this matter, he cites Schmalzgrueber in *Jus Eccl. Univers.*, part 9, title 20, no. 105: "Singular witnesses, cumulative or supportive, are those who testify about different acts, but acts that tend to the same end, and who assist each other." Witnesses of this type (he adds in the following numbers) have different force in criminal and civil matters; in the former, they are usually not sufficient to inflict punishment... in the latter, however, they sometimes prove partially...

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sometimes even fully. It does not impede that the circumstances of time and place are discordant; for they are concordant with respect to the same end... hence, singular witnesses should not absolutely be said to be insufficient. Nor does Cosme in *De separatione thori*, book 2, chapter 14, nos. 77 to 81, dissent from the theory of the singularity of witnesses presented above. But in our case, there are not only the three witnesses mentioned above who concur in proving the impediment of affinity; their depositions are aided and corroborated by several other witnesses, who all report that there was a public rumor that Angela conceived a child through carnal intercourse with Francis. Therefore, in addition to the witnesses who testify to having seen [the events], there are witnesses who testify about the public voice and the reputation, which indeed are of this kind.

[*Latin ed. p. 267*]

CALATAYERONEN. 267. Speaking more cautiously, the evidence scarcely provides complete proof; but in the case where the deposition is supported by special circumstances, which demonstrate dishonest relations between Angela and Francis before her marriage to Nicholas, and that Francis' actions resulted in Angela conceiving a child; therefore, there can be no doubt about the nullity of Angela's marriage to Nicholas due to the impediment of affinity. However, if the aforementioned reasons are not sufficient to prove the nullity of the marriage, the consulter, proceeding to consider the dispensation, states that no doubt can be raised concerning the power of the Supreme Pontiff to grant a dispensation over a valid and unconsummated marriage, provided that it is established that the marriage remained valid, and that there are grounds for granting the dispensation. Regarding the unconsummation of the marriage, the sworn deposition of the groom, Nicholas, is particularly relevant, in which he states that, after the marriage was celebrated, he did not cohabit with his bride even once. This fact of non-cohabitation is confirmed by several witnesses examined, some of whom speak of the places where Angela lived after the marriage, and never mention her living there with her husband. Furthermore, from the fact asserted by the witnesses that the spouses did not cohabit, it is shown that the marriage was not consummated, but merely contracted; this is taught by Coscius de separatoribus, book 1, chapter 16, paragraphs 13 to 18. To this, Sánchez De Matrimoniis, book 2, dispute 23, chapter 1 adds: "If the bride was not a virgin, nor did the groom bring her to his house in Tarifa, the credibility of their oath is used... and if they were not brought to Tarifa together with the oath, it is a very strong indication." In this case, the oath of the bride was not taken, because she was not questioned about this matter; but the oath of the groom was taken, who states that he never cohabited with his bride, as well as the depositions of witnesses regarding the aforementioned matters. And if, according to Sánchez, the credibility of the spouses' oath is used, then a much stronger

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proof is obtained when the oath of one is corroborated by other witnesses.

[*Latin ed. p. 268*]

268 CALATAYERONEN. Indeed, even though a direct inquiry was not made by the Tribunal of Calatayeron to ascertain the lack of consummation of the marriage; it can nevertheless be deduced as a consequence, from the testimonies. For, besides the fact of the non-cohabitation of the spouses, there is also that insuperable aversion of Angela towards her spouse Nicholas, which was manifested before the marriage, when she abandoned the spouse and attempted to inflict death upon herself. For, as Coscius teaches in *De Separ.*, lib. 3, cap. 1, aversion and antipathy existing between spouses provide the most valid argument for proving the lack of consummation of the marriage, even in the case where the spouses have cohabited; and even more so in the more difficult case, in which the spouses have not slept together; a fortiori, this aversion will provide a very valid argument for the negative consummation, when it is established that the spouses have never cohabited, as the same Coscius states in the aforementioned passage, no. 247. And this is especially true, as the cited author teaches in the following passage, no. 248, "when, after the marriage, one or the other immediately manifests a vehement antipathy and aversion towards the other; for just as prolonged silence harms him who is silent, Cap. 1 *De Frigid.* and *Male Fecit*, so the timely manifestation increases the force of proofs, even doubtful and presumptive, as the same text continues." Finally, the aforementioned facts concerning the dishonorable love with which Angela pursued Francis, the spouse's brother, both before and after the marriage celebrated with Nicholas, add greatly to the proof of the lack of consummation. Regarding the lack of consummation, it is understood, with Sánchez *De Matrim.*, lib. 2, disp. 15, no. 5, that although it is truer to say that a dispensation granted without a just cause is entirely null; nevertheless, a cause is not necessary that pertains to the public good, but it suffices that which pertains to private utility, and this is the opinion of Caietan, *Opus*, vol. 1, Tract. 28; Felin, *Consil.* 26, no. 10; Pignatelli, *Consult.* 148, no. 9, vol. 1. In this case, there are present causes, and indeed very serious ones.

[*Latin ed. p. 269*]

CALATAYERONEN. 269, wherein he states that the first [reason] consists in an insuperable alienation of affections between the betrothed. Indeed, that alienation of affections between spouses is itself a sufficient cause for granting a dispensation, is taught commonly by the Theologians, among whom is the most learned Cajetan, volume 1, Opera, Tractate § 28. Another just cause for granting a dispensation, according to Sánchez de Matrimonio, book 1, dispute 13, number 3, consists in a grave fear of a great future scandal, due to the fear of fornication, because the spouses

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greatly dislike each other, or because of enmities that are feared between the spouses, or their relatives. However, in this case, there is not merely a fear of scandal, but a scandal, and indeed a very grave one, which has existed for approximately thirty years, both on the part of the groom and on the part of the bride. Both are found not only in danger, but in a state of eternal damnation. This constitutes a public and very grave scandal, to which one can only respond by means of a ratified dispensation from marriage. The Consultor concludes that, from what has been discussed so far, there are two ways to decide this case, one which is called that of justice, and the other, which is called that of grace. That which is called the way of grace, which consists in a dispensation, is not necessary whenever sufficient proofs are found of the existence of impediments to declare the marriage null. In the contrary hypothesis, recourse can be had to the way of grace, by consulting the Most Holy Father for a dispensation from a ratified and unconsummated marriage. But in this second case, a correction of the proceedings, or a dispensation regarding the lack of due and specific inquiry concerning the unconsummation of the marriage, is necessary. And before granting Angela permission to marry Francis, it must be requested of the Most Holy Father a dispensation from the impediment of honesty, which arises in this case from a ratified marriage. This impediment also prevents the celebration of a new marriage, if the nullity of the first marriage were to be declared solely on account of the impediment of affinity between Angela and Francis.

[*Latin ed. p. 270*]

270 CALATAYERONEN. and not because of an impediment of force or fear. For as Saint Alphonsus de Liguori teaches in book 6, treatise 6, on marriage, chapter 3, paragraph 1062: "If the nullity of the marriage arises from a reason other than a defect [in consent], then a certain impediment to the validity of the marriage arises, since in this case, the ancient right is not corrected." Finally, it must be considered whether there is an impediment due to the crime, before granting Angela permission to marry Francis, because, as Angela herself confesses, while Francis's legitimate spouse was still alive, Angela and Francis committed adultery, with a promise of marriage. And this impediment must be removed by dispensation, whether the marriage in question is judged null, or whether a dispensation is granted concerning a marriage that is valid but not consummated.

OPINION OF THE CANONIST: The canonist, having considered the facts of this case, observes that if the matter were limited to the actual request of the parties, it could be resolved with a brief inquiry; that is, whether, from what is contained in the records, it is clear that this marriage was not consummated; and whether there are any of those very serious reasons present, in view of which the grace of dispensation is usually granted. But since one must not resort to this remedy until there is

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hope of demonstrating the nullity of the marriage, and a dispensation from a bond that never existed would be futile; it is necessary, he says, first to investigate whether the reasons that argue for the nullity of the marriage are of such a nature that they cannot lead to a moral certainty of this nullity. Furthermore, when a judicial sentence has been pronounced in this sense by the Church, before the merits of the evidence presented are subjected to a new examination, it must be investigated whether the procedural acts were diligently completed, and whether all the documents relevant to the matter were truly collected. Indeed, such acts, although they may not present anything worthy of censure in terms of external form, must, in terms of internal...

[*Latin ed. p. 271*]

CALATAYERONEN. 271. The substance of the collected proofs leaves much to be desired. Indeed, it is sufficient to examine the records to convince oneself how incompletely the witnesses were questioned regarding the impediment of force and fear. Very little, or almost nothing, is found in the records concerning the character and nature of the woman's parents, nor whether they had other children. Furthermore, what were the moral qualities of the woman? Was she timid, or impetuous? Regarding these and other circumstances which would have served to strengthen the proof of the alleged fear, none of the witnesses were questioned; only a few things were presented by the woman herself. Moreover, the judges seem to have omitted investigating the causes which might have led the parents to instill fear in the woman; and the testimony of a generic woman, who asserted that she had been forced into marriage by her parents, was dismissed, because they considered this marriage to be suitable. However, the consultant asks: in what way was this marriage suitable, when it is known that Nicholas was destitute of good fortune, and that the parents of Angela had visited him, so that he might seek sustenance through manual labor? The entire demonstration of fear rests upon the depositions of the parties and three additional witnesses. But Angela says nothing other than that her parents sometimes threatened her, and sometimes struck her, though not with very severe blows. Nor does Nicholas say much, except that after asserting that his fiancée had shown some sign of consent, he subsequently added that this consent had been extorted from her by her parents, who sometimes gave her gifts. These things, the consultant adds, are few; and Nicholas did not reveal the cause of his knowledge, nor was he questioned about it. Furthermore, the testimonies of the parties are not only weak, but also, in some respects, contradict each other; for while Angela says that she was dressed in ordinary clothes on the day of the marriage, Nicholas testified that she entered the church adorned with a habit. Nor are the depositions of the two sisters Bosso more reliable, concerning which the

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consultant observes 1. that these sisters did not reveal...

[*Latin ed. p. 272*]

272 CALATAYERONEN. Nor does one know what the cause of the alleged beatings might have been. 2. It is presumed that the parents could not have given these beatings to the daughter in the presence of the same sisters, and therefore these witnesses should be regarded as if they were reporting hearsay. 3. Finally, their testimonies contradict those parts which speak not of beatings, but of some other assault. Indeed, the testimony of Francisca Collori may be held in greater esteem, both because she does not reveal in what the alleged coercion consisted, and because she has stated things which rather oppose presumption of fear than favor it. Against them, however, there exist in the records certain elements which oppose the alleged coercion, namely: 1. The character of the parents, who are generally described as being good. 2. The lack of any cause which could suggest fear; for Angela testified that the parents pursued her with affection, while Nicholas was poor and earned his living through manual labor. Furthermore, Angela was so free in her father's house that she could have had adulterous relations with Nicholas at will; indeed, as Nicholas himself asserts, on the very day of the marriage, she had not been taken by her parents to the church, and could have refused consent. Nor is there any sign of coercion, such as any indication of affection shown by Angela to Nicholas, which, barely after the marriage was celebrated, she threw herself into a quarry. This first action can rather be attributed to a liaison already existing between her and the bridegroom's brother, than to fear instilled by her parents. Regarding the second, one must consider the unfortunate and almost desperate condition of the woman, who within a few months would have to make her disgrace manifest to everyone. Hence, it could easily have happened that, given these circumstances, she did not enter into marriage by coercion, but rather by the urging of her parents, with the intention of avoiding the impending disgrace, and later imposing an end to her miserable life. In this matter, there remains almost no hope of demonstrating the nullity of this marriage through the force and fear involved.

[*Latin ed. p. 273*]

CALTAGIRONE. 273. It must not be said that another impediment to marriage, namely, an illicit relationship, existed in the first degree of consanguinity. It is to be deplored that the officials of the Caltagirone diocese have committed grave and inexcusable omissions in this matter as well. Regarding the existence of an illicit relationship, it has been established with certainty, both through testimonies and through other evidence, that the woman, on the very day of her marriage, was found pregnant, having fallen into a stone pit, and that a few months later, she gave birth to a child. This pregnancy, it is true, originated from an adulterous relationship that

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Angela had with Francis, the brother of her betrothed, Nicholas, before the marriage. Not only does Angela herself confess this under oath, but three witnesses confirm certain facts that demonstrate that an adulterous relationship took place, and which occurred before their very eyes. This testimony is further corroborated by public opinion, which scarcely acknowledged that Angela was pregnant, and immediately designated Francis as the guilty party in this crime. Finally, the very fact that Angela, after giving birth, requested to be received into the home of Francis, along with her newly born child, and that he received her, lived with her, conceived another child, and remains with him to this day, adds considerable weight to the testimonies of the witnesses and confirms them strongly. However, regarding this matter as well, there are indeed some serious deficiencies in the proceedings, due to the summary method by which the actions were carried out by the diocese. In truth, the public was aware that Francis had committed adultery with Angela before her marriage to Nicholas. The diocese should have, at the very least, requested that the witnesses provide the names of those from whom they learned of this reputation; and if those individuals were still alive, they should have been subjected to examination, so that other witnesses could be obtained. In addition, the diocese committed a manifest error in asserting the nullity of the marriage based on this impediment.

[*Latin ed. p. 274*]

274 CALATAYERONEN. This was not the case, because the three witnesses mentioned above were, in fact, unique in their testimony regarding the aforementioned events. Indeed, this uniqueness is not merely simple, but cumulative, since various arguments are presented to prove the same crime, and the three witnesses, although in different circumstances, all confirm that they observed Angela in adultery. However, the consultant asks why Francis himself was not called to testify to strengthen their depositions. Why did neither he nor the woman dispute these facts? These points are sufficient to demonstrate that more information is lacking in the records, which would have been most necessary, and which could have added further weight to the already serious evidence. Since more information could still be obtained from these new examinations, the consultant's opinion is that the proposed question should be answered: that the evidence regarding the impediment of affinity in the first degree, arising from an illicit union, should be further investigated, as instructed by this Holy Congregation, and that Francis, brother of Nicholas, should be examined above all others. Indeed, it does not seem inappropriate to add something to this instruction to strengthen the evidence regarding the lack of consummation of the marriage, in the event that the path of justice should be found insufficient, and a recourse to a papal dispensation would be necessary, at least as a precaution. It is not sufficient to exclude consummation by proving

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that the two spouses never lived together after the marriage; it is necessary to demonstrate that there was no mutual relationship between the parties after the marriage. Although this may be asserted by the parties and suggested by the facts described above, yet, when dealing with a matter in which certainty is required, rather than presumption, it is best if something more explicit were also requested from the witnesses in this matter.

REMARKS OF THE DEFENSOR VINCULI (OFFICIAL). The defender of the bond denies, first of all, that a marriage exists in the case.

[*Latin ed. p. 275*]

CALATAYERONEN. 278. No impediment due to the fear instilled in Angela by her parents. For it is stated that, in order to establish this impediment, there must be a grave fear in her, or at the very least, in the opinion of her, as stated in S. Rota, December 217, number 5, concerning Caprara. However, neither of these conditions is established by the records in this case; indeed, Angela herself admits that her parents constantly insisted, using threats, and sometimes with minor beatings. As for the second condition, no trace of it can be found, since neither the actress nor the witnesses questioned were able to determine whether Angela considered the threats and beatings of her parents to be grave, or at least, whether they restricted her free will, as stated in S. Rota, loc. cit. Nor was it inquired whether Angela was naturally timid, or whether she was unwilling to obey her parents' commands; nor whether the parents were of a harsh nature, and whether they were cruel to their children, and especially to the actress, and other similar matters. Regarding the alleged impediment of consummation of marriage, it must be noted that the same lack of evidence causes concern. For, since Nicholas and Angela, being separated from each other, have conceived illegitimate children, and therefore the question cannot be resolved through a physical examination, it is necessary to resort to that type of evidence which is obtained through testimony. As stated by Cosci, in *De Separatoris*, book 1, chapter 16, numbers 13 to 18: "Indeed, witnesses can provide proof that the marriage was merely contracted, by stating that the spouses, after the marriage, never lived together in the same place, or at least, that they always remained in the presence of other people, and that those people witnessed their separation." It is true that the records of the process seem to indicate that Nicholas and Angela did not live together after the marriage, but it does not, however, definitively prove that they were never alone together for any length of time, which is what needed to be demonstrated. Regarding the impediment of affinity arising from the illicit relationship that Angela had with Francis, the brother of Nicholas, before she married him, the Defender of the Bond, considering the foregoing,

[*Latin ed. p. 276*]

276 CALATAYERONEN. [He argues that] the episcopal court does not

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consider this impediment to be any more than the aforementioned proven force and fear; and [he observes that] the canonist believes that there is not sufficient evidence either regarding the nullity of the marriage, nor regarding its consummation, nor regarding the causes for a dispensation, and that strong presumptions exist regarding the validity of this impediment, since it appears to be proven by three witnesses. Nevertheless, he does not rule out that the aforementioned testimonies of the witnesses could be opposed by this exception; namely, that memory, especially concerning the circumstance of time, which, as is evident, pertains to the substance of the testimony, could deceive them, since so many years have now passed. He considers that these witnesses are not singular, because they recount facts that, although treated in different places and times, are nonetheless recurring and tend towards the same end. Furthermore, he cites the doctrine of the Sacred Roman Rota, which in decision 97, paragraph 1, part 6, records: "Although the witnesses may not agree concerning the time and place... nevertheless, when they testify concerning a subsequent fact, in which the exception of singularity is not admitted, according to the more common opinion of the Doctors... they are presumed to be consistent." And this is to be observed with greater rigor in facts that are carried out secretly, and are remote and eliminated from arbitraries; decision 155, paragraph 62, part 6. Furthermore, he believes that a general exception should not be overlooked, which refers to the acts of the process transmitted to the Sacred Congregation [of the Holy Office]; for he states that in this matter, the individual questions of the defender of the marriage, or of the judge, and the respective answers of the witnesses, are not transcribed in the same order in which they were made, but only adapted depositions, or rather, a synopsis of the depositions; and that the deposition of Francis Basso is lacking entirely. Furthermore, concerning the oath of the witnesses, the notary does not attest to the faith of each witness individually, but calls the witnesses who have taken the oath together, and subsequently writes down their depositions in the manner described above. Regarding this matter, he believes that the acts of the process are either defective from the beginning, or have been defectively copied. However, even with such defects, he contends that...

[*Latin ed. p. 277*]

CALATAYERONEN. 277 I. It is not the place for a dispensation concerning a marriage that is alleged to be valid but not consummated; 2. It does not appear that the marriage is null due to coercion or fear; 3. To the extent that the Eminent Fathers believe that the marriage is null due to the impediment of affinity, it is not permissible for the actress to enter into marriage with Francisco Basso, unless first, with them, regarding the impediment of the crime arising from adultery with a mutual promise of future marriage, and also, for caution regarding the impediment of public

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justice and honor, which is presumed to arise from the marriage, a grave and salutary penance has been mercifully dispensed. With these premises established, the following questions are to be resolved: Doubt I. Does it appear that the marriage is null in this case? And to the extent that the answer is negative. Should consideration be given to the Most Holy Fathers for a dispensation concerning a marriage that is valid but not consummated in this case? RESOLUTION. The Sacred Congregation of the Council, after deliberation, on December 12, 1885, gave the following response: The proofs are to be extended and supplemented, according to the instructions to be given by the defender of the bond to the Sacred Congregation. According to the aforementioned instructions, the Court was ordered to examine Francisco Basso, and to ensure that the actress transcribed verbatim everything, whether from the defender of the marriage or from the judge's questioning; and also, to transcribe in detail the responses of each witness. Furthermore, with regard to Joseph Froglio, Joseph Vitale, and Carmel Greco, it was ordered that they be re-examined; and that the authentic records of their examination be transmitted to the Sacred Congregation. If only a summary of their examination was sent to the Sacred Congregation, a copy should be transmitted. In a new and constituted process, the diocesan court again gave its judgment on the validity of the marriage that is valid but not consummated, but it determined that the impediment of affinity is probable.

[*Latin ed. p. 278*]

278 CALATAYERONEN. Illegitimate union. Nevertheless, from the depositions given, it is clearly evident that the marriage was validly contracted and not consummated; therefore, he earnestly prays that the Most Holy Pope may deign to grant a dispensation concerning the valid but unconsummated marriage. OPINION OF THE CANONIST. The canonist, in the first of the four points of his opinion, argues that Angela freely consented to the marriage contract with Nicholas. He observes that Angela neither hated Nicholas nor was compelled by her parents to enter into such a marriage. Regarding the first point, the consultant asserts that he has not found any cause for hatred; indeed, from what Angela stated, a cause for affection seems to have existed. If Angela truly hated Nicholas, she would have found something in him that was repugnant to her. But she has presented nothing, nor can she present anything. Nicholas was, in fact, almost like a subordinate of Angela's father, and was so upright in his conduct and just, that Angela's father received him as his helper for several months. Furthermore, Angela herself confesses that she found in Nicholas qualities that please a woman, and those which are considered good. For a woman is attracted by the beauty and gentleness of a man. However, after 35 years, she states that her husband was handsome in appearance and of a kind disposition, inclined to love. Nevertheless, she did not outwardly manifest her love for Nicholas before her husband, lest the zealous Francis

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be offended, and her love diminish, while Angela hoped that Francis would provide her with assistance, both in terms of money and defense against the wrath of Nicholas, should her fault be revealed on the day of childbirth. Regarding the second point, according to Angela, she was in no way compelled to enter into marriage with Nicholas; since coercion, which consists of the forceful restraint of liberty, is entirely absent in this case, and the assertion of coercion by the bride contradicts the evidence. All the witnesses testify that there was no such forceful restraint.

[*Latin ed. p. 279*]

CALATAYERONEN. 279 declare; but they report of presumptions from the neighbors, namely, from the parents. Only Lucy Basso and Francis Agnello speak ambiguously, but directly, of some slight coercion. But in order that the marriage may be declared invalid on this ground, fear must be present, which falls upon the man, or the fear of death and torments, as is stated in Chapter VI, concerning those who are compelled by force or fear. In this case, however, neither is verified; for the evil that Angela feared, as she herself confesses, and as Nicholas testifies, were not serious blows, by which she was sometimes afflicted by her parents. Nor could the matter be otherwise, either because Angela declared that her parents pursued her with love, or because all the witnesses testify to the mildness of her father's character; or because finally, there was nothing that could move her parents to compel the daughter to contract marriage with Nicholas; since he was poor and sought his daily sustenance through the labor of his hands. According to the opinion of the Consultor, Angela's parents insisted on this marriage because they knew that their daughter had been corrupted, and that there would be no one who would take her in marriage. Nicholas, simple and unrefined, having asked Angela in marriage, Angela's parents believed that fortune had smiled upon them: for the shame of Angela could be covered by the warning given to the mother concerning Nicholas, especially since they had learned that she had been defiled by Francis, Nicholas's brother. On the contrary, Angela, feeling herself to be pregnant, or considering it less disgraceful to her to commit a simple adultery, than to endure the torment, because she had the intention of persevering in her wicked life; or expecting the death of the wife of Francis, from whom she had freely received the promise of marriage with himself, and who gave her reason to believe that it would be improper to take Nicholas as her husband. Therefore, she told her parents that she preferred death to marriage with Nicholas. But after better reflection, and without her parents accompanying her, she went to the church, and before the priest, she declared her consent to Nicholas, although, in order to

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demonstrate the coercion, she—

[*Latin ed. p. 280*]

The provided text does not contain the quotation for Ps 138:17. Therefore, no changes can be made.

280 CALATAYERONEN. It was alleged that she had entered into marriage against her will, and that she had only given her consent with her lips. However, Angela was free from her parents when she went to the church, she could have fled, she could have freely declared, with the accompaniment of her friends, that she was being forced into marriage with Nicholas, she could have made this very thing known to the parish priest. In one word: Angela, had she not been shamefully betrothed to Francis, would have gladly entered into marriage with Nicholas. She was not afraid of her parents, but of Francis's zeal. She was not only attracted by Nicholas's appearance and his gentle manner, but she secretly loved him. She was accompanied to the church by a dress given to her by the groom. She herself went to the church, followed by her friends. All of these things show that the marriage was celebrated freely, and not under duress, as stated by the Sacred Rota in its decision of July 1, 1726, before Calcagnino. "Another sign of the will to enter into marriage is that the marriage is celebrated with the proper solemnities. The presence of others and the grandeur of the ceremony are strong evidence of the absence of fear." To all of this, the consultant adds that the Church presumes that verbal consent is true, as long as it is not clearly proven to be false, and that she who denies having consented to the marriage is not believed, even if she confirms with an oath that she did consent, as taught by Innocent III in Cap. Per tuas X de proh. et cap. tua nos de spons. verb. mulier. "For it is most unjust, according to the legitimate laws, that what each one has declared with his own voice should be able to invalidate the very testimony that confirms it." After these points, the consultant argues that Angela's desire for death should be understood as a result of the impending infamy, and not as a sign of her opposition to the marriage, and that this is demonstrated by the more careful examination of new witnesses in the second trial. He insists that these points should be given precedence, because in law, these things are established. "From this, more witnesses are led, but from the other side, there are fewer witnesses, whose testimonies are not only different, but in some cases, completely contradictory."

[*Latin ed. p. 281*]

CALATAYERONEN. 281 "has stated, because one must not consider the multitude, " but rather the quality of the witnesses and their testimonies, " to whom the light of truth more readily lends assistance, from whom " we order that the judge be informed of the movement of their souls, etc." Chapter 32, concerning witnesses, and testimonies. Since, therefore, the

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witnesses in the second process are those who saw, and among them are those who accompanied Angela to the church, and those who ministered aid to her in danger of death; it is already evident that greater credence should be given to them. Indeed, these witnesses unanimously testify that Angela fled, not after the rite of marriage, but after the nuptial feast, and threw herself into a stone pit. They also testify that she was joyful during and after the feast, and was not afflicted by the marriage; that at that time, furious, she asked Francis, either out of respect for her brother, who was already betrothed to Angela, or to test Angela's fidelity, that she would leave for a long time. Therefore, the absence of Francis, they say, aroused great anxiety in the heart of Angela, who was already pregnant and exposed to insults. Thus, this despair did not arise from the marriage with Nicholas, but from excessive love for Francis, from whom she saw herself deprived, or from consideration of her future condition. Nicholas was to her like a veil, by which her crimes were concealed, and she could even rejoice in him at times, in the hours when the adulterer was not present. But when Francis departed and Nicholas learned of the adultery, Angela was exposed to the danger, perhaps of death, at the hands of Nicholas. From what has been said, it is clear that no proof is offered against the marriage of this kind of Angela, but rather a grave suspicion of her own adultery is generated. In the third chapter, the consultant submits to the Episcopal Curia that it erred, not only in the first sentence, in which it maintained that the illicit union between Francis and Angela before the marriage had not been proven, because the witnesses were not contesting, but were individuals; but also in the second, in which it maintained only a probable impediment of affinity. With these things presupposed, the impediment of affinity arises from the union...

[*Latin ed. p. 282*]

282 CALATAYERONEN. He states that what is permissible in the marriage in question can be demonstrated, first, from the testimonies of informants, second, from the testimonies of eyewitnesses, and finally, from public opinion. Regarding the first, after recounting the deposition of Carmelo Greco, who declared that he had seen Francis and Angela frequently embracing and exchanging kisses, he adds that these are grave indications of a scandalous habit, from which one can suspect the licentiousness of their way of life; for those who have not yet fallen into vice do not dare to engage in such actions. However, this occurred before the marriage, as can be inferred from the fact that the witness in his deposition affirms that Nicholas had previously warned Francis about his improper friendship with Angela. The same is presumed from the deposition of Fortunata Spechiale (in whose house Angela was lodged and gave birth), who testified that Francis visited Angela, and that Angela, who was constantly silent and sad, was made joyful when Francis visited her. All of this is confirmed by

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two eyewitnesses, namely Joseph Frolio and Joseph Vitale, who also clearly testify to the illicit intercourse that Angela had with Nicholas before her marriage. And such witnesses, when they testify spontaneously according to the dictates prescribed by Innocent III in Chapter 33 of the Pastoral Letter to the Bishops of Piacenza, are to be considered reliable. Finally, this is also corroborated by public opinion; for the witnesses unanimously testify that Angela was seen pregnant, and immediately public opinion designated Francis as the author of the pregnancy. In law, to obtain certainty, it is necessary to have a combination of evidence, namely, the testimonies of witnesses and public opinion. These two types of evidence are sufficient in this case to prove that Angela committed adultery with Francis, Nicholas' brother, before Angela contracted her marriage with Nicholas. Therefore, in this case, the marriage must be declared invalid due to the impediment of affinity arising from the illicit intercourse. Finally, the consultant observes that the circumstances preceding the testimonies of the witnesses are consistent with the facts that occurred after.

[*Latin ed. p. 283*]

CALATAYERONEN. 285. The birth of Angelmann occurred. Indeed, Angelmann feigned resistance to marriage with Nicholas, because, as she herself confessed, she cherished the love of Francis. He visited her very frequently, especially when Nicholas was not present. Such actions gave rise to numerous reasonable suspicions, which demonstrated that a friendship existed between Angelmann and Francis, and that this friendship was strengthened by the gifts that Angelmann spontaneously gave from Francis; moreover, Angelmann's intention was to have her life taken from her, when she heard that Francis was about to leave the town. Moreover, Angelmann was found to be pregnant, and public opinion indicated that no one other than Francis was the author of her pregnancy; but she herself confessed before the delegated judge that she had had intercourse with Francis before her marriage with Nicholas, and when she gave birth, the midwife openly declared that the child she bore was the son of Francis. Witnesses testified to the scandalous act, which was the object of the preceding suspicions. After giving birth, Angelmann returned to Francis, with whom she has persisted, from the day she was freed from the pains of childbirth until now, in a sad and brutish indulgence. Having elucidated these matters, the consultant concludes that all that is contained in the first and second proceedings converges into one point, namely, that Angelmann was adulterous before the celebration of her marriage with Nicholas. In the fourth and final section, the consultant argues that the marriage was not consummated, because he believes that, due to the zeal of Francis, from that time on Nicholas abandoned his wife; especially since, before that, she had shown her aversion to Nicholas, displaying her affections for Francis. It is not to be believed that Nicholas ever

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approached the woman, whom, on the day of the marriage celebration, he noticed was excessively attached to his brother Francis, while the latter feigned departure, and she, despairing of this, sought death; therefore, it was necessary for Nicholas to return to his homeland. The witnesses are unanimous in stating that...

[*Latin ed. p. 284*]

284. ANGELMANN. The woman, Angela, and Nicholas met neither on one day. And since an examination of the place cannot be undertaken in this case, it is sufficient to prove that the marriage was valid, given that there were so many witnesses who, both in the first and second proceedings, gave unanimous testimony. Therefore, both by presumption and by the testimonies, it has been sufficiently demonstrated that this marriage was valid and never consummated. Hence, it is not surprising that the ecclesiastical court, which was so cautious in pronouncing a judgment in favor of the validity of the marriage, excluding the impediment of affinity arising from an illicit union, twice maintained that this marriage was valid but not consummated, given the unanimous testimony of the witnesses in the proceedings. It cannot be supposed that Nicholas, who left Angela when she threw herself into a stone pit, later returned to her. If this had only happened once, the eyes of all the inhabitants of the town would have been fixed on what transpired between the betrothed, and even if the betrothed met only once, the witnesses would have hesitated in their testimony, either because of ignorance of the circumstances, or because of a desire to declare their denial. Having considered all these things, it is concluded that, if the impediment of affinity arising from an illicit union has not been sufficiently proven, a dispensation can be granted by the Holy See, so that, with the marriage to Nicholas remaining valid but not consummated, Angela may marry Francis, with dispensation from the impediments of public notoriety and of crime. Such a grace is requested by a numerous progeny, which is still considered illegitimate and truly is so: there is no hope that the hearts will be reconciled; there is a moral certainty that Angela will not leave Francis, with whom she has lived a most wretched life for thirty-six years. NEW OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE. The defender of the marriage points out that the statements made by Angela, which were presented in the proceedings of December 12, 1885, can in no way be considered, whether viewed externally or internally. For the records of the new proceedings show an examination of nine...

[*Latin ed. p. 285*]

CALTAGIRONE. Twenty-eight witnesses were present, of whom seven had been questioned by the vicarius forane of the locality of Scordia, and two by the vicarius forane of the town of Militello. It is reported that these witnesses, after having been subjected to six interrogations by the Calta-

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girone Curia, did not, in any way, appear at the examination of the seven witnesses from Scordia; in the examination at Militello, however, they did not open their mouths. Moreover, the defender of the marriage bond committed more serious offenses against the blessed Constitution of the Divine Law. Indeed, according to the aforementioned Constitution, it is the duty of the defender of the marriage bond to attend the examination of witnesses, to defend the validity of the marriage with voice and in writing, and to present all that which he deems necessary for the upholding of the marriage. On the contrary, the defender of the Caltagirone Curia wrote, based on the declarations of the witnesses, that it appeared to him that the marriage was invalid, both on account of the impediment of affinity arising from an illicit union, and on account of the force and fear instilled in Angela. Neither the vicarius forane nor the actuary of Scordia deserve praise for having taken care to write down the depositions of the seven witnesses, not in the proper context, but perhaps after all had departed from the judgment. Indeed, it is known that scribes and notaries must describe the answers of witnesses in the very context and with the very words in which they were uttered by the witnesses; furthermore, their answers, written down by the actuary, are not to be considered unless they are clearly and intelligibly read aloud, and each witness confirms and signs them. It is said that the witnesses presented themselves to the judge and the actuary, and that they signed the answers they had submitted, because the witnesses did not know how to write. The witnesses could have signed the precious information with the sign of the cross, as they did sign the individual answers of no importance, with which they dismissed the questions put to them. Nevertheless, the contents of the new process must be disregarded, not only because the judge, the defender of the marriage, and the actuary, from whom the process derives all its validity, have greatly deviated from their duties; but also because the witnesses, being questioned negligently and generally, responded with negligence and incompletely.

[*Latin ed. p. 286*]

286. CALATAYERONEN. This is easily understood if one considers that the consulter does not borrow all the arguments of importance to support Angela's action from a new source, but from the initial process. Indeed, even the consulter himself has not proven the asserted fear, although the questions and answers of new witnesses primarily concern the matter of fear. Therefore, it is concluded that the two propositions, given the negative response, must be dismissed. With these premises established, the following propositions are to be examined:

I. Does it pertain to the matter of the nullity of the marriage in this case? And, to what extent, negatively.

II. Should the Most Holy Congregation be consulted regarding a dispensation for a marriage that is valid but not consummated in this case?

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RESOLUTION. The Sacred Congregation, after discussing the matter on June 16, 1888, decided to respond as follows:

1. Affirmative.

2. Provided for in the first.

FROM WHICH ONE MAY GATHER:

I. In a marriage process for confirmation, in which the existence of an impediment and fear are being investigated, witnesses must be examined regarding the nature and circumstances of the part to whom the fear is said to have been instilled.

II. Also, regarding the moral qualities of that same part, namely, whether he is timid, or whether he is capable of resisting any command given by the parents.

III. Furthermore, the causes that led the parents to instill the asserted fear must be investigated.

IV. The actuary must transcribe verbatim, either the questions of the defender of the marriage or the judge, as well as the complete answers of each witness.

V. And to the Sacred Congregation, not a synopsis of the process completed in the Curia must be sent, but a copy of the entire process.

VI. A marriage cannot be entered into by a coerced consent, because, as St. Thomas states in the Supplement, question 47, article 3, it signifies the union of Christ with the Church, which takes place according to the freedom of love.

[*Latin ed. p. 287*]

CALATAYERONEN. 287 V I L. It is not sufficient for a dispensation to be granted merely based on the value of the impediment; rather, it must be granted completely, because it must be perpetual. VIII. This perpetual impediment can be removed by coercion through fear, which affects a steadfast man. IX. An affinity is contracted through illicit unions, which, according to the Council of Trent, Session 24, Chapter 4, invalidates marriage up to the second degree, inclusive. X. It often happens that the opposition to marriage, especially arising from an illicit union, is motivated by envy or malice, and therefore it is not easy to accept the testimony of a single accuser, even if rumors about the matter are prevalent in the vicinity. XI. Nevertheless, it is not necessary, in these cases, to demonstrate the illicit union through direct proof, nor is it necessary for witnesses to testify to it, with all exceptions; because this concerns a matter that is difficult to prove, and witnesses are not often called. XII. It is generally accepted that, in such cases, the impediment can be proven not only through presumptions and conjectures, but also through the testimony of witnesses, provided that they are cred-

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ible. XIII. And these presumptions and the testimonies of witnesses must be joined together for this purpose, according to the commonly accepted principle: "Singula quae non prosint, unita iuvant" (Individual things that do not help, when united, are helpful). XIV. It is possible to prove [the impediment] more strongly through single witnesses, but through a single witness who provides corroborating or cumulative evidence, or through witnesses who, as Schmalzgrueber states in *Iure Eccl. Univers*, Part 9, Title 20, No. 105, testify about different facts, but which tend to the same end and mutually support each other. XV. It is not necessary to resort to the way of grace, or to consult the Most Holy [Father] for a dispensation from a marriage that is valid but not consummated, whenever the way of justice is open, or when there is hope of demonstrating the nullity of the marriage; for it would be futile to grant a dispensation from a bond that never existed. XVI. Within the marriage, the nullity due to the impediment of affinity arising from an illicit union, which occurred before the marriage,

[*Latin ed. p. 288*]

288 CALATAYERONEN. Angela had a relationship with Francis, the brother of her betrothed, Nicholas, and it appears that this relationship was disclosed, rather than being concealed by considerations of propriety, or by fear or apprehension on either side.

CIVITA CASTELLANA. MINUTES OF THE CHAPTER. July 21, 1888. Session 24, Chapter 12, Concerning Reforms. SUMMARY OF EVENTS. On October 9, of the year 1885, after due notification and with the chapter duly assembled, the eleven canons of the cathedral chapter of Civita Castellana, together with their head, the Archpriest Lepori, convened and regularly conducted business on various matters. Finally, one of the canons, Baroni, having been granted the floor to speak, declared that it was the desire of himself and many of his colleagues that a priest, M. G., who was deemed worthy and deserving, be proposed and elected to a canonry, due to the constant assistance he provides in hearing sacramental confessions. Therefore, the Archpriest, as president of the chapter, was requested to inquire as to the votes on this proposal. The Archpriest then asked whether a written request from the candidate was present. And when it was answered that such a request was not present, nor could it be obtained, because the candidate was absent; moreover, it was not absolutely required, for the constitutions made no provision on this matter, and in other cases, four or five canons had been present in the chapter, and the election of such a candidate had been proposed and carried out without any written request: The Archpriest proposed that the matter be postponed to a later meeting. However, Canon Baroni objected, citing the chapter statutes and established custom, and the Archpriest, indignant, began to say, "We proceed..." by which he meant that he considered the chapter meeting to be dissolved. But all the other canons remained standing in the chapter hall, and the senior among

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them, Angelus Pasquetti, assumed the presidency.

[*Latin ed. p. 289*]

CIVITATIS CASTELLANAE, 289, declared that the assembly was to be concluded. Then, the Canon Mínio, related by blood to the Archpriest, said: "I will not speak of the merits of the Archpriest's actions; but I believe that the chapter assembly has already been concluded; and that nothing remains for the chapter except an appeal to the Bishop. However, I declare that I will remain in the chapter so that those present are not marked as absent." For the statutes, in article 28, caution that "he who leaves without the chapter being concluded will be marked as absent." The Canon Pasquetti, however, objected to the Archpriest's departure, stating that it was done in such a way that the chapter assembly could not be concluded, and he presented further evidence in support of this assertion. Based on these reasons, the same Canon, as Dean and interpreter of the will of the chapter, declared that the chapter assembly should proceed, and that the proposal of Canon Baroni should be resumed. When no one spoke, he ordered that a vote be taken on the matter. Eight votes were in favor of the proposal, and one was against. And so, the assembly was dismissed according to custom. However, the matter was brought before the Bishop, who considered the election of the honorary canon to be valid and confirmed it. But the Archpriest did not agree and appealed to the Sacred Congregation of the Council, requesting that it be determined "whether the election of the honorary canon is valid or not." When the Bishop and the chapter were asked to express their opinions on this matter, the former indicated that he would abstain from voting before the Sacred Congregation, since he had already approved the acts of the chapter. Before submitting the matter to the Sacred Congregation, the chapter entrusted it to two canons, who were to approach the Archpriest and ask him to withdraw his appeal in obedience to the Bishop, who had declared the chapter's proceedings to be valid, and to maintain harmony with the chapter. But since he did not agree, and with the holding of new elections, all the members of the chapter, except for Mínio and Cherubini, who abstained from voting, stood in favor of the validity of the disputed nomination. In the meantime, the question is raised after the legally ordained acts have been completed. But so that no confusion arises in the discussion, it should be noted that the Acts, Volume XXI, page CC XLV, [refer to this source].

[*Latin ed. p. 290*]

290 In Civita Castellana, from the very beginning, it has been the case that the validity of the election is not impugned, at least directly, based on the qualities of the elected, but solely on the validity of the proceedings of the chapter meeting in which the election took place. Therefore, the discussion must be limited to this point. Furthermore, the facts themselves

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are not in dispute, but rather the law; that is, whether, with the departure of the archpriest, the president, the session is also dissolved, and whether subsequent actions fall outside the scope of the chapter proceedings. A Synopsis of the Dispute. AN INVALID ELECTION SEEMS TO BE TO BE DENOUNCED. The fact that the actions are not disputed is evidenced by the canon Minio, who, along with Cherubini, suffered the wrath of the archpriest, to whom the same archpriest subscribed. The question, therefore, is one of law. And regarding this, Minio proceeds as follows: "In my initial opinion, which favors the archpriest, I consider the chapter meeting of Pasquetti to have no legal value." He argues as follows to demonstrate this: "The meeting held under Canon Pasquetti is considered either as a continuation of the previous session held under the archpriest, or as a new session; there is no middle ground." But neither of these is the case. For, in the first place, it is not a continuation of the preceding session. Indeed, according to the doctrine accepted by canonists, a chapter is a college under the direction of its head, who assumes the title and office of prelate or dean, archdeacon, or archpriest, according to the various laws of the churches. In the matter at hand, the head of the chapter is undoubtedly the archpriest; therefore, the presidency of the chapter belongs to him. Furthermore, it is the president who convenes the chapter, proposes matters for discussion, and collects votes, according to what is taught by the Sacred Roman Congregations in Naples, March 25, 1695, and by the Sacred Congregation of the Council in Bologna, June 16, 1863, Lünen, Sarzanen, March 12, 1695, together with Garzia, *De Beneficiis*, part 3, chapter 4, paragraph 26; and also by Barbosa, Fagnano, and others. He who acts in this way can also dismiss the chapter. These things seem to be equivalent. But in the case before us, the archpriest, rising from his seat, and offering *gratias* (thanks).

[*Latin ed. p. 291*]

In Civita Castellana, 291 having voted, according to established practice and common understanding, the assembly was dismissed and understood to be dismissed. Therefore, the chapter session was considered concluded, and whatever transpired afterward appears to be something to be considered outside of the chapter. Furthermore, Ferraris, volume, chapter 1, article 23, states that it belongs to the Bishop "to have precedence in horology," that is, in determining the time and duration. Therefore, by analogy, it also seems that the archpriest has the right to dissolve assemblies on this matter. Consequently, the session held under Pasquetti cannot be considered a continuation of the previous one, which, according to what has been said, was properly concluded; it remains to be investigated whether it can be considered a new session. However, in this regard, the synod objects; for in chapter 5, session 1, article 2, paragraph 26, it prescribes that chapter assemblies should be announced by "him who has hitherto claimed authority," that is, by the archpriest; and they should be announced the day

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before by the sound of the bell, by a notice affixed in the sacristy, and by the announcement made individually by messengers. Since all of these things were omitted, the assembly held under Pasquetti, being illegal, is to be considered of no value. To the objection that is raised, namely, that if it were entirely within the president's power to dismiss assemblies, nothing would ever be done that did not please the president; the speaker responds: 1. that the archpriest had not refused to act on the proposed matter, but had considered that the matter should be postponed to another meeting. And not without reason. For, as is stated by De Angelis in Decree I, 3, title 8, "the institution of such [honorific offices] is intended to increase the honor of the Church and to reward a particular person for special merits," as the Secretary S. CC. noted in Terradria, or Sezze, on February 16, 1788, and in Genoa, on January 28, 1837. Moreover, "regarding their number, care must be taken that it does not increase so much that it becomes devalued, and that an excessive number of canons does not become a disgrace to the Church." And finally, "sometimes the S. C. [Sacred Congregation]..."

[*Latin ed. p. 292*]

292 In CIVITATIS CASTELLANAE, the number of titular canons was not increased, nor was even a single honorary canon created, as mentioned in the case of Terracina. Therefore, the matter required careful deliberation. Moreover, there were already four or five honorary canons in the chapter, who had been elected with undue haste, without any consideration of their merits, and from whom no assistance could be expected, since they were outsiders; thus, a novel method of action was needed to rectify the situation. The newly proposed candidate, although having occasionally provided assistance to the cathedral, especially during the Easter season for sacred duties, could not be considered worthy of appointment based on merit. Furthermore, the chapter was already sufficiently staffed with titular canons, and did not seem to require honorary canons. Therefore, postponing the nomination until the subsequent elections, as the archpriest had suggested, could not be considered unreasonable. Indeed, it seemed to be in accordance with the synodal decrees. For these decrees, in citation 5, article 29, state: "In matters of dispute, where different opinions exist, proposals made in one chapter are rejected and referred to another for a decision." Furthermore, the archpriest appears to have acted within his rights. For, according to Garzia, De Beneficiis, part 3, chapter 4, number 26: "It belongs to the superior, or the more dignified, to convene a chapter for the purpose of deciding matters, etc.; this is an act of jurisdiction that belongs to the president by reason of his superior authority." Peter and others concur with this. But more importantly, this opinion is consistent with the special statutes of that church, as well as the diocesan synod. For the latter, in section 28 of chapter 5, states: "Matters to be discussed shall be proposed by the president." And in chapter 13, it states: "Proposals

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shall be made by the highest dignity, or, in his absence, by the one who succeeds him in order." Therefore, since, according to the cited authorities and the diocesan regulations, the right to propose matters is reserved to the president, that is, in this case, the archpriest, the archpriest appears to have acted within his rights by postponing the matter. For to whom the right to propose is reserved, also belongs the right not to propose. These rights are correlative. Let it not be said, therefore, that the archpiest, out of a desire...

[*Latin ed. p. 293*]

In Civita Castellana, the chapter, by a majority, could have permanently prevented the desired proposal from being enacted. For, the canons could have sought redress from the Bishop, indeed, from the synodal authorities, according to frequently cited constitutions. These constitutions state: "Even if only one canon requests it, an assembly must be convened." Therefore, anyone who desired it could have requested and demanded that a new assembly be held the following day, in a regular manner. And if the archpriest had opposed this just petition, contrary to the canons and the statutes of the Church, he could have appealed to the Bishop, or, according to the established procedures of the Sacred Roman Rota in Eispalen, July 2, 1700, and Gerunden, June 14, 1702, he could have compelled the chapter to convene through a senior canon. Therefore, to conclude this point, since the archpriest refused to propose the matter of the appointment of an honorary canon at the chapter meeting on October 9, 1885, and dismissed the assembly in the customary manner, and appears to have acted within his rights; then, everything that subsequently occurred is invalid, alien to legitimate assemblies, and must be declared without effect. THE ELECTION APPEARS TO BE INVALID. On the other hand, it seems absolutely necessary to deny that the exclusive power to propose matters to be discussed at a chapter meeting belongs to the president of the chapter; as Scarfantonio teaches in *Comm. 2, c. 4, tit. 4, n. 54*, that "it pertains to the head of the chapter to propose whatever he wishes, after which it is permissible for others to do the same, and this applies to each member of the chapter in turn." This, and what necessarily follows from it, derives from the right that each member has within the chapter, and in which the essence of canon law consists. Indeed, although this term is often understood to mean the right to cast a vote, other rights also apply, and among these is undoubtedly the right to propose questions and to make requests, as is testified by the aforementioned Scarfantonio in volume 2, book 4, title 3, n. 1, and is commonly accepted in practice. Moreover, it is suggested by the very basic principles of sound reason, since if only certain matters could be discussed

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in the chapter,

[*Latin ed. p. 294*]

294 In Civita Castellana, where those who smile upon the president, the very notion of a chapter, which is a society of brothers, would be undermined, and despotic power would be in the hands of the president to prevent whatever he did not please. Furthermore, if, according to Scarfantonium, loc. cit., title 1, no. 43, "a chapter must be composed of those whose interests are always and when urged by the chapter; – extensive – even if such an urging is made by a single canon, who desires to propose a matter of no small importance," then, a fortiori, any of the canons can propose something in the assembled chapter. Let it not be said that this is opposed by the statutes and synodal laws or custom: for the statutes and the synod clearly prescribe, in this case, that matters to be discussed should be proposed to the chapter by the president; but this arrangement must necessarily be understood in accordance with the dictates of sound reason and general laws, that is to say, not exclusively or absolutely, but primarily. And this is shown from the statutes themselves. For there, in chapter 13, it is stated: "Let the proposals be made first by the highest dignity, and then, by him who is present, by the one who succeeds in order; which proposals, if perhaps they are rejected, will be presented again in order by others, and whoever, according to his conscience, will give his vote." Indeed, when the synod, in chapter 5, § 20, commands that "even if a single canon requests it, (the) assembly must be held," it implicitly, but nonetheless openly, suggests that it is the right of any of the canons to propose matters. This conclusion is also favored by custom; for it is noted that the chapter has been accustomed to ask the archpriest to speak before the dismissal of the assembly and the recitation of *gratiarum*. Do you have anything else to propose? And although the archpriest and his supporter, canon Minio, object, saying that the archpriest did not precisely ask the brothers, but rather in this way: "Do you have anything?", nevertheless, the matter amounts to the same, and this objection seems frivolous. However, even if it is understood that the archpriest has the exclusive power to propose matters, this right should not be understood to be given to him for the purpose of destruction, but for the purpose of edification; that is to say, to exclude abnormalities from discussion, and not to exclude those that are legitimately considered, both in substance.

[*Latin ed. p. 295*]

IN THE CITY OF CASTELLANE 295, concerning the manner in which votes are to be cast, they demand that he refuse. However, concerning the matter at hand, the request of Canon Baron appears legitimate, both in substance and in form. For, it concerned the co-opting of an honorary canon. Furthermore, the matter in itself was canonical, and could not be disap-

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proved in its adjuncts. Indeed, he who was proposed could not be subject to any just censure, he was pleasing to all, he was an aid to the Church, and greater benefit was expected from him in the future. Therefore, there was no reason to exclude him from this; all the more so, since several foreign priests, certainly inferior in merit, had already been co-opted as brothers. Nor was there a valid reason based on the number of honorary or titular canons; for neither of these groups, exceeding the others in number, appears to be such that the Church is thereby burdened. Therefore, the matter proposed was not dishonest or abnormal in substance. But neither was it so in form, for no certain form or law, either of the universal Church or of the particular statutes of that Church, is prescribed concerning the presentation of honorary canons. Certainly, the archpriest, Minio, and Cherubini contend that the request, made in writing and by the candidate himself, ought to have been presented according to custom; but what they affirm is not confirmed by any argument, except their own authority. Conversely, the other capitulars deny that this had ever been the practice in the chapter. However, the greatest concession should be given, and it should be retained that it was entirely certain whether the request of Canon Baron, for the co-option of an honorary canon, was canonical and legitimate, either in its substance or in its form; nevertheless, even in this state of affairs, the president was not justified in defining the matter; but he should have consulted with his brothers about this business. And if they had concluded contrary to his intention, he could indeed have appealed to the Bishop, or to the Holy See, to correct the proceedings; but in no way was it permissible for him, on his own initiative, to interrupt the matter already begun, to recite the *gratiarum actionem* [a formal expression of thanks], and to depart.

[*Latin ed. p. 296*]

296 Of Civita Castellana: Neither is the departure of the archpriest justified by § 20, chapter 5 of the diocesan synod, where it is stated that "in matters where opinions differ, proposals made in one chapter should be rejected in order to be defined in another." Firstly, it was unclear whether the diversity of opinions that the synod intended actually existed in this case. Indeed, since one canon, Baroni, had made a petition on behalf of himself and several other confreres, and the archpriest had opposed it, and no one else had intervened with opposing words, secondly, it cannot be denied that this diversity of opinions did not exist; for there was only a minority opposing the majority, as the subsequent outcome and vote clearly demonstrated; therefore, the matter was not ambiguous, nor could it, according to the synod, be postponed to subsequent meetings; because in such a case, all matters that are not concluded with unanimous agreement should be postponed. But thirdly, even in this matter, if any doubt remained, the chapter should have been consulted, and the question should not have

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been divided solely at the will of the archpriest. Moreover, if matters to be discussed in the meetings can be proposed by even the simplest of chapter members, and if, especially if they are legitimate and canonical, they cannot be refused by the president, nor can they be postponed at his discretion to other meetings; then it follows that, on that day in question, what was proposed by Canon Baroni should have been discussed, and it was not permissible for the archpriest to depart, nor was the chapter dissolved by his departure, and the subsequent actions were not extra-canonical, but rather the archpriest himself should have been subject to penalties for his illegitimate absence. And in truth, the presence of the archpriest, or of any other dignitary, is not absolutely necessary for the chapter, so that without their presence, or with their departure, the meetings cannot continue. Indeed, the accepted doctrine is found in Scarfantonium, loc. cit., Ferraris, v. Capitulum, § 2, and elsewhere, and it is also stipulated in the statutes and synod of Civita Castellana, that if a member of the chapter is absent, and especially if he departs without a legitimate reason, someone else should take his place. Therefore, in this matter, it makes no difference.

[*Latin ed. p. 297*]

CIVITATIS CASTELLANAE 297: The Archpriest has departed; and it cannot be said that the assembly is dismissed because of his departure. Furthermore, it makes no difference whether the Archpriest has recited the prayer of thanksgiving; for although it is customary to recite it at the end of assemblies, yet if the president, without consultation and arbitrarily, rises before the business is completed, or even while it is being carried out, and recites the aforementioned prayer, this should be considered something done by the individual, rather than by the president of the assembly. Therefore, the assembly can only be dissolved by the president, and is considered to have been properly concluded, when the business that was begun has been completed according to law, and no one else has anything further to add; or even when the majority and more prudent part of the chapter agrees to this. This, without dwelling on further examples and pronouncements, seems to arise spontaneously from the very nature of assemblies of chapters. And it is confirmed by chapter 19 of De eieci., where, when the Archdeacon of Capua, together with his supporters, left the chapter hall and interposed an appeal, "that no election should be held unless it be canonical," and then, even when asked, refused to return; others proceeded with the election, and the Pope considered it valid, without regard to the departure of the Archdeacon and the others, whom he indeed declared to have "made themselves alien" from the election by this action. Therefore, the Doctors and Reiffenstuel in h. t. n. 200 conclude that "if some members withdraw during the course of an election, the others proceed without them." Indeed, those who withdraw in this manner are punished with the penalties for absentees, as is generally stated by Scarfantonius in the afore-

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mentioned passage, and the statutes and synods of the Church of Civitas castellanae specifically state this. It may be added that a different discipline exists in Civitas castellana. For, at first glance, this seems somewhat unfair and unsuitable. But moreover, it does not actually exist. For, according to the Archpriest and his supporters themselves, it is customary there, before the assembly is dismissed, for the president to ask: "Do you have anything else?" Furthermore, on the very day that the Archpriest departed, Minio declared that he was in the hall.

[*Latin ed. p. 298*]

298 Of the City of Civita Castellana, lest the penalties of absence be imposed upon them. And this is what Che rubini did. Therefore, not only the adversaries, but also the supporters of the archpriest, considered, or at least doubted, that the elections would not be completed. Furthermore, the unanimous opinion of the capitulars, supported by the confirmation of the Ordinary, has great value regarding the validity of the disputed elections. After considering these things, the purpose was to resolve the doubt: Whether the election of a canon, holding an honorary title, made by the chapter of the City of Civita Castellana on the 9th of October, 1885, was valid in this case.

RESOLUTION. The Sacred Congregation, having knowledge of the matter on July 21, 1888, decided to respond: Affirmative, and moreover.

FROM WHICH IT IS UNDERSTOOD:

I. Canonicals holding honorary titles, who are instituted in our times in many chapters for the purpose of divine worship and to adorn the Bishop's council, can be elected by the Bishop with the consent of the Chapter, or by the Chapter with the consent of the Bishop. (1)

II. Regarding the election of such Canonicals, no specific form is prescribed by universal Church law; so that, if no specific form or custom exists in a diocesan synod, or in the chapter statutes, any form can be used, which can clearly and legitimately express the will of those electing. (1)

III. It is the opinion of Doctors, and it is accepted in practice according to canon law, that any canonical holding a title can propose questions and make requests; unless it is said that this only pertains to Chapters that have a presiding officer. (1)

IV. Indeed, although it is ordinarily the practice for the presiding officer to convene the chapter, it is also possible for it to be convened by those who have an interest, even if only one person makes the request to propose some important matter. (1)

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(1) Recueil, Vol. III, 138, Vol. IV, 189, 317, 579, 585.

[*Latin ed. p. 299*]

CIVITATIS CASTELLANAE 299. The President indeed possesses the ordinary power to propose matters to be treated in the chapter; however, in such a way that he may exclude those things which are irregular, not those which are subject to the votes of some, and which are duly proposed, both in substance and in form; otherwise, the President's power would be for destruction, not for maintaining order.

VI. It was considered that the proposition was canonically and legitimately made; and that the President acted unreasonably in opposing the petition of several brothers, with the intention of abruptly abandoning the proposed matter and postponing it to other meetings at his own discretion.

VII. The chapter meeting can reasonably be dissolved by the President when the matters to be treated have been duly completed; thus, if, without legitimate cause, he departs from the assembly, he who follows in dignity will take his place and legitimately conduct the meeting in the place of the President.

VIII. The election was duly carried out; and the President and his associates, who are outsiders, abstained from this election.

(1) CIVITATIS CASTELLI SACRORUM UTENSILIUM. July 21, 1888. Session 22. Decree concerning observations and things to be avoided, etc.

COMPENDIUM OF THE FACTS. In the cathedral church of Civitas Castellana, a chaplaincy was established in the year 1612 by a certain Panulli, with a legal endowment from lay patrons, with an annual obligation of 52 Masses, under the title of the Most Holy Cross. Its patron is now said to be the Reverend I. B. de Michaelis, who has been the possessor of this endowment since the year 1844.

(1) Concerning ecclesiastical elections, see Volume VIII, page 389; Volume IX, page 138; Volume X, page 273; Volume XIII, page 390; Volume XVIII, page 97; Volume XIX, page 68.

[*Latin ed. p. 300*]

300 Città di Castello. Here, although it is admitted that he sometimes used to pay a contribution for the use of the sacred vessels in the sacristy, he maintains, erroneously, that he did so, and that he is in no way obligated to do so; which requires that this be declared by the Sacred Congregation of the Council. However, the Chapter maintains the contrary, to which the Bishop entirely agrees. Since it had not been clearly ascertained from various documents when this contribution was first paid, the Bishop was consulted regarding this matter, who responded: that, from the administration books of the Chapter, which he himself had seen, it was gathered that a tax for the utensils had been collected from time immemorial to satisfy the expenses of the Masses, although the records were in somewhat

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disordered condition; and that this began from the year 1818 and continued until the year 1847. During this period, it appears that a tax of 70 *oboli* was paid annually. From the same records, it was also gathered that the aforementioned Father John Baptist of Michael had also paid the same tax until the year 1865.

Synopsis of the Discussion. And, first of all, the principal disposition in this matter is based on the ancient decrees of the Sacred Congregation of the Council. For the Sacred Congregation of the Council, after consulting with the Fathers on July 21, 1625, under Urban VIII, having made many provisions concerning the celebration of Masses; but since afterwards some doubts arose concerning the interpretation of these decrees; and among other things, "Regarding VII, concerning the same decree of the Congregation by which it is prohibited to a priest who undertakes to celebrate a Mass with a certain alms, that he should allow another to celebrate the same Mass, with a part of that same alms, if retained, to be celebrated; it was asked whether it is permissible for the administrators of churches to retain a certain portion of the alms for the expenses of the maintenance of the church, the altar, the servants, the vestments, the lights, the wine, the hosts, and similar things; " the Sacred Congregation of the Council responded: "Regarding VII, it is not permissible for churches and pious places, or their administrators, to retain any, even the smallest, portion of the alms from the celebration of Masses, on account of the expenses they incur in the celebration of Masses, unless the church and pious places have no other means."

[*Latin ed. p. 301*]

Of Città di Castello, 301 florins, which may lawfully be expended for their own expenses; and then, whatever portion they retain, must not exceed the value of the expenses which are necessarily incurred for the very sacrifice of the Mass, and nevertheless, even in that case, it must be ensured that, from the funds remaining after the aforementioned expenses have been deducted, absolutely as many Masses as have been prescribed by those offering alms are celebrated." And this resolution was approved by Innocent XII, in an apostolic letter, recently, on the first of January, 1697. It would seem that, spontaneously, no deduction should be made from the stipends for Masses, neither for the use of utensils. But because that clause had been justly added, namely, unless the church has other revenues, it is permissible to deduct the cost of utensils, this exception, contrary to the law, was clearly established. But another point was quickly added; for, when examining the words of the decree, it seemed that the aforementioned prohibition applied indeed to Masses offered by private individuals and to alms offered by private individuals, but not at all to perpetual endowments; and therefore, it was entirely proper to levy a tax on utensils from these endowments. And that the words of the decree should

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be understood in this way, it seems to be the case, 1. from the very meaning of the words; for those expressions, "that as many Masses as have been prescribed by those offering alms," and other similar phrases found in that decree, are to be applied to Masses offered by private individuals, and not to others, as noted in the *Rota*, decisions 463, numbers 5 and 6, before Merlino. Furthermore, 2. it seems that this has already been resolved by the Sacred Congregation. Indeed, in Osimo, on February 23, 1726, in response to a question as to whether rectors of benefices, chaplains, and others celebrating in the collegiate church of Cingoli were obliged to pay for utensils to the chapter of that church, although no one denied that the church was wealthy; and the rectors of benefices, in order to exempt themselves from this contribution, readily asserted 1. that they received more revenues from benefactors for expenses of worship in general, 2. that various sums were customarily applied to the same purpose by the sacristy, 3. that they had previously contributed nothing, and therefore, the church...

[*Latin ed. p. 302*]

302 In Città di Castello, the revenues had increased, not decreased; nevertheless, the Sacred Congregation of Rites responded: "Rectors of benefices, perpetual chaplains, and canons who hold perpetual canonries, perpetual chapels, and the chapter itself, in proportion to the perpetual obligations, are bound to provide for the expenses of the visiting clergy, and furthermore." And other resolutions are consistent with this, for example, those of Rome on May 10, 1727, and January 28, 1736, and Camerino on December 17, 1740, and a third from Rome on March 26, 1679, where the deduction of 4 guilders for expenses was approved, although the wording was such that it was understood that in each year, as many Masses should be celebrated as the revenues of their inheritance would allow. But in this matter, Derthonen also supports this, on July 7, 1726, where, concerning the second question: "Whether the archpriest of the collegiate church of the town of Fontes Curonis is and should be obligated to provide wine and hosts to chaplains and other priests who wish to celebrate, or who are obligated to celebrate Masses in that church," it was decided: "The archpriest is not bound to provide the utensils of which we are speaking to those who celebrate in his church by virtue of their benefice or perpetual chapel, except for those with whom he has particular agreements." Therefore, in the aforementioned Camerino, it is stated: "It is indeed a common practice that all and each of those who hold benefices and other perpetual chapels, and also the canons themselves, are bound to contribute to the expenses of the sacred utensils of the church, according to the practice of each church." Albertus explains the reason for this in *De Sacris Utensilibus*, chapter 14, paragraph 1: "Since the sacred utensils, which pertain especially to the offering of the Holy Sacrifice, are frequently used and daily, it is inevitable that they are consumed and worn out. Therefore, it is justly established that

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priests, when using sacred utensils in the celebration of Masses, should compensate for this loss by providing some sum." Therefore, the Sacred Rota in Cologne, on March 9, 1761, in decision 98, numbers 5 and 6, adds, following the same Albertus, chapter 13, paragraph 28: "It is unheard of..."

[*Latin ed. p. 303*]

In Città di Castello, it is held that the rector and beneficiary must provide the necessary sacred vessels within their own church. Indeed, it would be most unjust, and therefore the contrary opinion prevails, that the celebrant, when officiating in another church by virtue of a chaplaincy or benefice, should be obliged to provide the necessary vessels at his own expense, or, if he prefers to use those of the church, to pay a suitable compensation to the church. And this, as in the case before the Bishop of Città di Castello, because there is no law that obliges any church to undertake any burden without corresponding compensation. And although this reasoning might be applied to some extent to the case of a manual mass, the difference is significant; for one thing is to undertake a perpetual burden, and another is to provide vessels for an extraordinary occasion. From these considerations, it follows that the cost of the vessels can always be borne from benefices, chaplaincies, and perpetual legacies; indeed, even from manual masses, provided that the church is poor and lacks sufficient means to provide the necessities for the sacrifice of the Mass. After these observations, the opinion of the Reverend Fathers was expressed; and from these, some simply refer to certain decrees of the Sacred Congregation. Others, and the majority of them, such as Ferraris, *Utensilia*, Zamboni, vol. 4, *Conclus. v. Utensilia*, Monacelli, *Form. par. 4, n. 181, p. 107*, Pitonius, *De controv. patr. alleg. 54, n. 46*, and *alleg. 100, n. 165*, and there Amostazo, Tamburini, and Ursaya, seem to adhere entirely to the opinions explained above; where they also discuss the manner in which this contribution should be demanded, especially from priests celebrating manual masses, and the right of rectors to exclude those who refuse to contribute, or who do not bring their own vestments, candles, wine, and hosts. But there are also others, few in number, who adopt a stricter opinion, and maintain that the cost of the vessels should not be deducted from chaplaincies, benefices, or perpetual legacies, if the sacristy is sufficiently provided for. Thus, for example, Alberti, *De sacr. titens. cap. 13, n. 30*: "What we have said..."

[*Latin ed. p. 304*]

304 With regard to the Città di Castello, concerning priests who are obligated to offer the sacrifice of the Mass, the following applies: In poor churches, or those lacking sufficient resources, the provision of necessary liturgical vessels should be provided free of charge. However, if a church has abundant revenues and is not in need, its pastors are obligated, without any expense to themselves, to provide the aforementioned sacred vessels

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to the priests who are compelled to celebrate Mass in that church, either by the disposition of testators, or because it is not permissible for the administrators of a wealthy church to receive anything for the use of such vessels, as expressly prohibited by the well-known decrees of the Holy Congregation of the Council. Concerning the celebration of Mass, these were issued under Urban VIII. And this opinion appears to be confirmed by the Sacred Ordinary Council. For in the aforementioned Camerino, in the decision of the Most Eminent and Reverend Fathers, which was first delayed, they ordered that the Bishop should write and confirm a statute regarding the active and passive assets of the sacristy, and that a detailed account of the revenues of the same sacristy, whether from wax or from funerals, should be transmitted along with both the aforementioned statements of assets and revenues. Indeed, even Benedict XIV, in Instruction 56, § 13, seems to adhere to this opinion, where he states: "If a church experiences poverty, something may be retained for the necessary expenses of the Masses, since these are perpetual." In summary, the aforementioned general principles of law have been presented. THE PRIEST'S RIGHTS REGARDING MICHAELIS. Firstly, the priest here defends his exemption by appealing to Instruction 56 B of Benedict XIV, the testimony regarding which has already been cited. And then he appeals to the synodal decree of the year 1768, enacted under Bishop Lattanzi, where, in Act 1, chapter 5, § 19, the following is stated: "His Holiness Urban VIII decreed that absolutely nothing should be deducted from alms, specifically for the provision of vessels. However, he permitted something to be received from the stipends for perpetual Masses, only when they are celebrated in churches that do not have some other way to provide for the provision of such vessels." Therefore, in order to address these unforeseen cases, with this declaration we permit and assign to the pious churches and places of our diocese, which...

[*Latin ed. p. 305*]

"The city of Città di Castello does not possess revenues which it may lawfully allocate for its own expenses; therefore, it is permitted to retain one and a half bushels of wheat for each Mass celebrated, without prejudice to the alms which must be given to the priest celebrating." This arrangement was substantially confirmed by the subsequent synods of Mondelli, Muzi, and Turchi. Furthermore, the same canon observes that the cathedral church is sufficiently provided for its expenses through its own revenues; and that these revenues are not today absolutely diminished; for although something has been taken from the income by the government, the burdens are nonetheless less, and the offerings of the faithful are greater.

RIGHTS OF THE CHAPTER. Conversely, the chapter points out the two resolutions of the Holy Office cited above which are favorable to it; and furthermore, it observes that the diocesan synods cited permit the deduction of a tax of one and a half bushels for each Mass, if the church

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does not have other established revenues. The cathedral, indeed, certainly possesses some funds for worship; but besides the fact that this fund has been almost halved, and that the burdens are not today less than they were formerly, the Bishop also has this: the cathedral fund is for the expenses of worship, that is, for the worship of the cathedral itself; but not for the special burdens of individual benefices, chaplaincies, or prebends.

However, after these points, the chapter most strongly appeals to custom; regarding which the Bishop offers the following: "I have supposed that it would be better to put the matter in writing, and I have prepared a register of the taxes for expenses for this chapter." In this book, I found the taxes which the individual chaplaincies have paid. However, it is noted that the aforementioned [person] has, from the beginning, refused to pay the tax for expenses, but has finally done so up to the year 1876, although all other beneficiaries have been diligent. Furthermore, custom is not only the best interpreter of the law, especially in a doubtful matter, if such a custom exists in the matter; but also, besides its interpretative value, it can also have a prescriptive value, according to the principles of law. Even more so if it is further supported by a just agreement. The chapter states: "In this case, there is also the expectation..."

[*Latin ed. p. 306*]

In CIVITATIS CASTELLI, there existed a certain agreement between the Cathedral and the chaplain. And indeed, from the book of the Sacristan, it is clear that the chaplain submitted himself to the obligation of paying annually 78 gold coins; which he fulfilled until the year 1866. Moreover, in the year 1876, he paid five installments. However, the chaplain responds, arguing that the custom is abusive and therefore invalid; that, furthermore, if he paid for the use of the utensils for a certain time, he did so out of ignorance and good faith; and that the custom is neither continuous nor certain, for it is unknown whether his predecessors paid this tax; "I do not know," he says, "whether my predecessors paid the tax for the use of the utensils, and he contends that this exaction was first made in the year 1846, under the sacristan Corsi. Furthermore, he objects: when the Chapter entered into an agreement with me, it clearly stated that the chaplain was not subject to this tax for the use of the utensils, unless it were assigned to him, although the Cathedral was founded in the year 1615. Regarding this last point, it will be useful to note the following: 1. that the Chapter states that the agreement was entered into between the Cathedral and the chaplain; and not between the Cathedral and De Michaelis; 2. that although, in fact, an agreement existed between the current incumbent and the Chapter, it could not nevertheless be considered as a confirmation of the old law, rather than as an ordinance establishing a new one. Having considered these matters, the following question was proposed: Whether the chaplain De Michaelis is obligated to pay the tax for the sacred utensils

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to the sacristan of the Cathedral in this case.

RESOLUTION. After due deliberation, the Sacred Congregation decided to respond affirmatively and further. From which it is gathered: 1. That it is commonly received that all and each beneficiaries, and others holding perpetual chaplaincies, are subject to a tax for the use of utensils, so that they may compensate for the damage that the church suffers by using the sacred utensils while celebrating Mass.

[*Latin ed. p. 307*]

Città di Castello, 307, I, I. Concerning such taxes which do not affect the offerings made at Masses, now the tenth part of the book [i.e., the tithe] is established, according to the decrees of the Congregation for the Apostolic Visitation, concerning the foundation for each Mass celebrated daily. (1)

ALBANEN. Regarding the service of the choir, on July 21, 1888, Session 25, Chapter 12, Concerning Reforms.

COMPENDIUM OF FACTS. This matter was discussed on June 1, 1887, under the question of whether and in what manner the canons of the newly established church are obligated to provide service or to take turns. The [Congregation] responded: "Affirmatively, according to the articles of the agreement approved by the Sacred Congregation in the year 1769." (2)

The situation was as follows: In the chapter of the place of Ariccia, besides the ten canons of the first foundation, three other canonries were subsequently established, one by the noble family Ohigi, and the other two by the pious woman Felli Silveri. Furthermore, both those [original canons] and these [later canons] were, by the founders, exempted from the obligation of serving at certain Masses. However, two canons of the third foundation agreed with the original canons to provide service with them, provided that they would accept certain emoluments and benefits; and this agreement was approved by the Sacred Congregation. But in the year 1858, Cardinal Patrizi, in order to oversee the fabric of the church and to provide the sacristy with the necessary furnishings and vestments, which were entirely lacking, after hearing the chapter, petitioned and obtained from the Most Holy [Father] that four of the canons be suppressed. Consequently, by reducing the number of persons, more frequent services would be provided. Furthermore, two canons of the new foundation complained about the agreement (1) See Volume XII, page 294. (2) Already mentioned in Volume XX, page 225.

[*Latin ed. p. 308*]

308 ALBANI. The Albanians, having initially refused to proceed further, alleged two reasons: 1. that the agreement concerning the turn-taking had been made with ten canons; therefore, with the reduction of their number, the agreement was no longer valid; or, rather, even less so. 2. that the canons of the new foundation had not been consulted in this matter,

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and had not consented to the reduction. Nevertheless, the Sacred Congregation, on the aforementioned day, maintained its decision regarding the agreement already initiated, as explained above. However, this did not please Canon Julian, who today, with another benefit vacant, represents the entire body of canons of the third foundation. Therefore, he requested a new hearing; and furthermore, he requested the opportunity to present his arguments against the pontifical rescript of August 13, 1858, by which the reduction of the canons was sanctioned; since, as it was permitted by the rescript of May 1, 1888, "with the force of law, etc.," to present the matter together with the merits of the arguments, two questions for discussion arise, which are presented at the end of this page.

SYNOPTIC DISCUSSION:

WHAT APPEARS TO FAVOR CANON JULIAN.

This canon presented his case with the assistance of lawyers, who briefly summarized the following: If the canons of the third foundation had undertaken the burden of turn-taking under the condition that things remain as they were, or, "that the number of canons remain at two," then, with the reduction of the number of canons, they could certainly not be compelled to continue in the service; because, when the condition under which the obligation was made is lacking, the obligation itself also fails. *L. Non omnis ff. De reb. er ed.* But, although this condition was not expressly stated, it must always be understood in any agreement, according to Barbosa, Cl. 129, n. 2. *S. Rota coram Ansado decis. 164, n. 4 et 5, iuncta L. fin. Cod. De spons., et L. Quod servus ff. De condit, caus. dat.*, and because in these matters the saying holds true, that "the force of the tacit is the same as that of the expressed."

[*Latin ed. p. 309*]

ALBANESE. 309 Hoc etiam confirmatur ex alio principio, quod scilicet quoties conventiones, concordiae et contractus cursu temporis in iniquitatem vertunt, officio iudicis ad bonum et aequum redigi debent. L. Cum quidam *ff. De usuris, L. 2 Cod. De rescind. vend., Card. De Luca ' Ite regul. discep. 57 n. 12. In iniquitatem autem conversam esse conventionem, a n. 1769 inter canonicos veteris ac novae erectionis initam, probant patroni, ex eo quod hodie, post reductionem quatuor praebendarum, « canonicis primae erectionis, ut olim Episcopus notabat, e quatuor praebendis, de anno 1858 suppressis, non modicum obvenit commodum atque levamen, dum illis tertiae ob par maius inde servitium . . . nullum prore servitium advenit. » Accedit, quod haec reductio praebendarum facta fuit in detrimentum canonicis tertiae erectionis et ex facto ac consensu canonicorum veteris massae, ut infra fusius dicetur. Qua propter, vel a fortiori hi, et non illi,

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de hoc facto respondere debent. Unde concludunt oratores merito usque modo canonicos tertiae erectionis vices servitii fecisse ut antea, idest pro «duodecima parte: qua in re, cum et capitulum usque modo acquieverit, et Curia siluerit, tacitam approbationem accessisse, dicendum insuper videtur. Ad obiectionem vero quae potissime fit in hac causa contra canonicos novae erectionis, quod scilicet, hi cum turnos ferre desisterint, in aequali gradu se constituerint cum veteris massae canonicis; patroni respondent, 1. falsum esse quod novi canonici pure et simpliciter vices servitii ferre adpromiserint. 2. falsum quoque esse, quod in aequali societate veteribus canonicis fuerint recepti, quum ex suppressione quatuor praebendarum ipsi nihil vel fere nihil percepissent, dum plura sibi vindicaverunt veteris massae canonici. Ex quibus oratores putant ultro firmari principium quod tuentur, scilicet canonicos novae erectionis ob reductionem praebendarum veteris massae non teneri ad graviorem vicem servitii. Sed id vel luculentius adstrui iudicant impugnanda.

ALBANESE. 309 And this is also confirmed by another principle, namely that whenever conventions, agreements, and contracts, with the passage of time, turn into injustice, it is the duty of the judge to restore them to what is good and just. L. Concerning certain laws *ff. De usuris, L. 2 Cod. De rescind. vend., Card. De Luca ' Ite regul. discep. 57 n. 12. The patrons argue that the convention, initiated in 1769 between the canons of the old and new foundations, has become unjust, based on the fact that today, after the reduction of four prebends, "the canons of the first foundation, as the Bishop noted earlier, have benefited greatly from the suppression of the four prebends of the year 1858, while those of the third foundation have experienced greater service... without any corresponding benefit." Furthermore, this reduction of prebends was done to the detriment of the canons of the third foundation and with the act and consent of the canons of the old foundation, as will be explained more fully below. Therefore, these, and not those, should be held responsible for this matter. Therefore, the orators rightly conclude that the canons of the third foundation have, up to now, performed the same services as before, namely for "one-twelfth of the total." In this matter, it seems that both the chapter and the Curia have tacitly approved, and it should be said further. Regarding the objection most commonly raised in this case against the canons of the new foundation, namely that if these cease to take turns, they will be placed on an equal footing with the canons of the old foundation; the patrons reply: 1. that it is false that the new canons have simply and purely promised to perform services. 2. that it is also false that they have been received into an equal society with the canons of the old foundation, since, from the suppression of the four prebends, they have received nothing or very little, while the canons of the old foundation have claimed more for themselves. From these points, the orators believe that the principle they defend is further confirmed, namely that the canons of the new foundation are not

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bound by a greater burden of service due to the reduction of prebends of the old foundation. But they judge that this should be demonstrated more clearly and refuted.

[*Latin ed. p. 310*]

310 ALBANI. They allege that the very grant of reduction, that is, the apostolic rescript of August 19, 1858, was infected with defects of surreptitiousness and nullity. Indeed, they claim that from the aforementioned documents, it is manifest that two motives were present for the granting of the grant of reduction, namely: 1. the necessity of repairing and maintaining the church, and 2. the consent of the collegiate chapter. There, it is written: "Therefore, considering the reasons mentioned above, and also the consent of the collegiate chapter, exhibited by secret votes, we entrust this to you, etc." But both of these are false. For, the patrons prove that the canons were moved not by concern for the house of God and the necessity of the fabric, but rather by their own self-interest, in that: 1. the former canons were, in fact, exempt from contributing to the sacristy; 2. because the Chigi family contributed 20,000 scudi for the restoration of the buildings from 1874 to 1885, as the reasoning of that same family demonstrates; 3. because even the municipal authorities of the place contributed greatly to this; while, on the contrary, the chapter offered the smallest contributions; although, as the same canon Julian testifies, the chapter has obtained considerable sums in recent years, even from uncertain sources. Furthermore, they prove that the second motive, that is, the consent of the chapter, was lacking, because the canons of the *novae* erection, when the matter of the suppression of the benefices was being discussed, were not consulted, as is testified by the canon of the second erection, Fortini, the priest Salustri, the canon Valeri, and the canon De Angelis; indeed, they were not even summoned to the chapter, as the same Fortini testifies. This is also confirmed by subsequent events; for, the canons of the *novae* erection neither abstained from the benefices at the beginning, nor were they able to resume their duties, conditionally and under certain conditions, if they had attended the chapter session, where the reduction of the benefices was sanctioned. It may even be said that the canons of the *novae* erection did not have the right to intervene and be summoned, since the matter concerned their own interests as well, at least because...

[*Latin ed. p. 311*]

ALBANEN. The assembly of 311 canons, and therefore they certainly ought to have been heard, according to the well-known principle, "that which touches all ought to be approved by all." CONCERNING THE CANONISTS OF JULIANI. But, contrary to the apostolic rescript upon which the canonists of Giuliani rely, it should be noted that this was not obtained through the prayers of the chapter, but through the insistence

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of Cardinal Patrizi, who, having visited the temple and sacristy during a visitation, found the former dilapidated and the latter depleted of sacred furnishings. The canonists of Giuliani, in order to prove the necessity of the repairs to the fabric and sacristy, assert that the Chigi family and the municipal authorities contributed several thousand *libellae* to the restoration of the temple; but rather than proving the truthfulness of the claims and the validity of the rescript, this rather serves to confirm the statements made by Cardinal Patrizi. For if the temple truly did not require repairs, why would a patron contribute 20,000 *libellae*, and the municipality contribute even more, for its restoration? Nor is it true that the chapter contributed nothing, and converted the funds from the suppression of four prebends to its own profit. For this sum was divided into four parts, and 10 *scudata* were assigned for sacred catechesis, 20 *scudata* for the increase of the archpriestly prebend, another 20 for a theologian; and finally, the remaining 190 *scudata* were to be assigned annually to the fabric and sacristy, with the approval of the Most Reverend Bishop. Certainly, the chapter experienced some benefit from this, since they were thereby exempted from the customary contribution to the sacristy; but because this benefit was minimal, and nevertheless greatly burdened those individuals, especially the prebendaries who were wealthy, it was not unjustly decided to abolish it. If the canonists of the new establishment were not admitted to these benefits, it was their own fault, since they challenged the reduction of the prebends, and wished to withdraw from the assembly of canons. Furthermore, whenever they returned to the old agreement, as happened in the year 1877, the chapter gladly absolved them from the contribution, granting them the same benefits.

[*Latin ed. p. 312*]

312 The Albanians, by granting them compensation, relieved them from the burden of paying five scuta for the use of the title, as the chapter affirms, citing acts pertaining to the matter. Therefore, the first objection against the truth of the petitions also seems to collapse; but neither does the second, drawn from the lack of consensus of the chapter, proceed better. Indeed, it was not the lack of consensus of the chapter, but the lack of consensus of the canons of the new foundation with the superior that was lacking; for a chapter was convened, and it was held under the presidency of the Vicar General, and four were present, of whom three, by secret votes, agreed to the granting of the reduction, while one opposed it. Therefore, what is written in the apostolic bull concerning the consensus of the chapter cannot be called false and surreptitious. Nor is it absolutely true that the canons of the third foundation were not invited to the meeting. This, however, is what the chapter states: that the names of two canons of the third foundation are not found in the minutes of that meeting; but the reason for this fact

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is easily found. For the cleric sent a messenger to the two, due to the lack of a formal invitation; the other was an old, sick man, and, having lost his sight, no longer left the house, not even for Mass. However, from this it is not permissible to argue that they were not invited. Indeed, it is likely that this did not happen, since [Emilio] Patrizi sent his Vicar to preside over this meeting, and the proceedings proceeded with the utmost regularity. It cannot be supposed that the Vicar General Savelli, experienced in these matters, sent to uphold regularity, would have acted in such a way as to commit such an irregularity. Therefore, the supposition of Canon Julian is entirely gratuitous, and distant from what is likely. Therefore, both motives for grace (if, indeed, the consensus of the chapter is to be called a true and positive motive) would seem to hold, and therefore the rescript also holds, and the decision to grant the dispensation, contrary to the apostolic letters, could not legitimately be given in any way. Regarding another doubt, namely, concerning the order of service, the actor's patrons contend that the agreement concerning the turns was made.

[*Latin ed. p. 313*]

ALBANI. 313, sub conditione saltem tacita "dummodo duodenarius numerus capitularium subsistat." Verum hoc non videtur satis exploratum, prout in folio praecedentis congregationis fusius dictum est. Etenim qui vicem servitii seu turnum cum corpore morali dividere spondet, aleam servitii videtur assumere, juxta regulam Celsi ad leg. 1 ff. De usu etc.; minime vero potest intelligi assumpsisse quotam partem servitii omnino fixam. Quandoquidem in hoc casu is cum capitulo convenisset, non de turno ferendo, sed potius de fixa parte, seu de determinata servitii portione unice ferenda. Hisce itaque attentis aliisque, quae iam retulimus alia vice, proposita fuerunt dirimenda sequentia Dubia I. An intret arbitrium aperitionis oris contra apostolicum scriptum diei 13 Augusti 1858 in casu. II. An sit standum vel recedendum a decisis in casu. RESOLUTIO. Sacra O. Concilii, re cognita sub die 21 Iulii 1888, censuit respondere: Ad I. Negative. Ad II. Hi decisis et amplius. (1) cum M^®^, URBEVETANAE CAPELLANIAE Die 21 Iulii 1888. Sess. 24 cap. 15 De reform. COMPENDIUM FACTI. Episcopus urbevetanus supplici libello exposuit: Collegium beneficiatorum Massae Cathedralis ex 12 ad sex redactum esse, et simul imminutos esse redditus singulorum; hinc gravius chori servitium factum esse, quod aegre ferunt beneficiarii. Ut aliquo modo Episcopus consuleret huic offensioni et beneficiatorum socordiae, censuit (1) Pro practicis deductionibus confer Vol. XX pag. 235.

[*Latin ed. p. 314*]

314 In the city of Vetana, an agreement was sought from a certain patron of a chapel, so that the revenues of this chapel might be distributed in favor of those benefactors who served the Church with greater diligence.

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The patron agreed, under the condition that the endowment of the chapel be reduced from 750 guilders to 500 guilders. Having obtained this consent, the Bishop petitioned the Apostolic See, so that he might fulfill his plan and free the patron from any burden, whether of offices or of Masses. When the Bishop was asked to hear the Rector of the chapel, and others who might have an interest, he replied: "The patron, together with the inheritance bequeathed to him by the late Lady Francisca, who died on October 1, 1862, has thus far retained a portion of 750 guilders, equivalent to 3990 livres, which the testatrix herself had intended for the erection and institution of a benefice under the title of the Most Sacred Heart of Jesus, at the altar of the family chapel, in the parish church of St. Michael the Archangel, with the following specific obligations: 1. To celebrate, or to have celebrated, two Masses each week in any of the churches, resulting in a total of 104 Masses per year; 2. To celebrate another 40 Masses within the year for the souls of the testatrix and her brother, Aloysius Orfeu. "Indeed, the patron has not sought the canonical institution of the benefice, although in past years he has fulfilled the obligations of Masses as intended by the testatrix. Therefore, since the benefice has not yet been established, and no designated rector exists, and public and canonical erection is hindered by existing laws, and considering, with due deference, the actual economic condition of the chapel, which is not very prosperous, I would recommend to Your Eminence that you grant a favorable hearing, so that I may, at least, be able to satisfy a portion of the burdens imposed by the testatrix, namely, the sum of two thousand five hundred livres (2500)." Immediately after this, the order was given to the same Bishop to hear the parish priest of St. Michael the Archangel; when questioned about this matter, he enumerated all the functions and obligations of the Masses, and indicated that the fund collected amounted to 2500 livres, which was barely sufficient.

[*Latin ed. p. 315*]

The parish of Vetana can yield an annual revenue of one hundred florins; they are capable of fulfilling the imposed obligations. The matter under discussion concerns the assignment of a chaplaincy to the benefice of the cathedral chapter: it appears that the disposition of chapter 15, session 24 of the Council of Trent should be given primary consideration, which states as follows: "In cathedral and collegiate churches, where frequent and, indeed, numerous benefices are established, along with daily distributions, so that they are not sufficient to maintain the proper dignity of the canons, according to the quality of the place and the persons, it is permissible for Bishops, with the consent of the chapter, to unite with them some simple benefices, but not regular ones; or, if this cannot be provided for in this way, with the consent of the patrons, if the patronage is legally held by laymen, to suppress some of them, applying the fruits and revenues of the remaining benefices to the distributions for the daily services, in order to reduce

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them to a smaller number; provided, however, that there remain enough to adequately serve the divine worship and the dignity of the church." Furthermore, it is evident from the Bishop's letters that the matter concerns assisting the canons of the cathedral chapter, who bear greater obligations and, therefore, are reluctant to serve. It does not impede that a reduction of the obligations of the masses may subsequently be necessary; for, indeed, the Sacred Congregation has not infrequently taught that assistance should be provided to the needs of the clergy through this means as well, as is evident from Fossan, September 18, 1824, §; from Montisalti, August 6, 1825, §; and from Naulen, May 8, 1824, §, and others cited by Agambini. And this is indeed just; for priests have the right to live off the altar, and therefore it is not undeservedly introduced that those requesting the application of masses should pay some tribute to the celebrant; and since this stipend is, by its very nature, a contribution to the church, the church can reduce and increase it according to the various exigencies of the times and the place.

[*Latin ed. p. 316*]

316 The circumstances of these [benefices] must be considered; hence, no one will deny that, legitimately, the number of Masses can be reduced. For, given a fixed endowment, an increase in the stipend necessarily entails a decrease in the number of Masses. Nor can the contrary will of the pious testator stand in the way. For it is most clearly established in law that, whenever a just cause arises, the last will and testament of testators can be regulated, and, all other things being equal, the Council of Trent, in the cited passage, chapter 15, session 24, teaches this precisely, where unions of benefices to the chapter table are permitted, which, indeed, rarely occurs without violating the will of the founders. And in our case, this just cause, namely the poverty of the benefactors, is confirmed by the Council of Trent, cited above, I. Furthermore, a certain principle of prudence suggests that the composition proposed by the Bishop should be accepted. For the economic condition of the patron himself, who possesses the benefice, is not said to be flourishing. And although the reduction of 250 florins from an endowment of 750 florins seems excessive, it was left to the judgment of the Most Reverend Fathers to decide whether it could still be permitted, since we are dealing with a patron who is said to be in need, and who, nevertheless, is affirmed to have fulfilled all his obligations to date. To all this must be added that the benefice is not yet established, nor can it be legitimately constituted, given that civil authority, albeit unjustly, forbids it. Therefore, the assignment of this endowment to the chapter would seem less objectionable for this reason as well. Finally, everyone can easily see that it is dangerous to leave the endowment in its present state; hence, perhaps, a new reason arises from this very aspect for admitting the petition. PRAYERS SEEM REJECTABLE. But, on the other hand, it must be considered that a serious injury would be done to the will of the testator.

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However, the Council of Trent, session 22, chapter 6, teaches that the laws of the founders must be observed, and that they must never be changed "unless from a just and necessary cause." This is even more strongly to be said of legates who are concerned with the divine worship and the salvation of souls.

[*Latin ed. p. 317*]

URBEVETAN 317 considers expiation; and, moreover, when it concerns legates appointed to benefices, for whom the Sacred Congregation of the Council, as testified by the blessed X IV Provincial Council of [Diocese], book 13, chapter last, number 23, diligently strives to ensure that, after their appointment, all other obligations are reduced. Nor should it be said that there is a just and necessary reason for admitting these requests. For there are two parts to these requests: one is promoted by those who benefit, the other by the patron and heir. In the former, the assignment of the legate to the benefice is requested; in the latter, a certain composition, or lesser sum, is proposed or presumed. But consider: the assignment of the legate to the benefice, in order to achieve the purpose for which it is requested, namely, to increase the endowments, should either be entirely or at least largely freed from obligations; for the total income scarcely suffices for the satisfaction of the prescribed obligations: if, however, the endowment is reduced from 750 to 500 scudi, then the obligations will exceed the income; therefore, ecclesiastical functions, as well as the votive offices offered to the Sacred Heart of Jesus, and other things which are usually performed annually, should be suspended; and almost all Masses. How contrary this is to the will of the pious foundress, no one fails to see; indeed, it could be a scandal to the faithful, seeing that supplications are omitted, if they should know that this happened in order to increase the endowment of the cathedral chapter, a fact which the pastor of the church should not fail to observe. Furthermore, the sum requested to be assigned to the benefice is so small, especially if a composition is admitted, that it confers a slight and almost imperceptible benefit on those who pray. Therefore, this assignment, while on the one hand certainly subverts the law of the foundress, diminishes the suffrage for souls, and deprives many of their devotional duties; on the other hand, it does not grant a significant benefit to those who pray. But, finally, some words of the Bishop also militate against the requested assignment, which deserve careful consideration; for they indicate not so much a desire to help the beneficed clergy, as...

[*Latin ed. p. 318*]

318. The necessity of the Urbvetana [Vatican] Congregation, in order to remedy the negligence of some, was requested by the Holy See. Concerning what is requested by the patron, it is hidden whether a reverential domestic lack [of funds] presses upon him, so that he may safely refuse the solution

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in conscience. The Bishop did not investigate the matter, and therefore speaks without knowledge. With these premises, the question was posed: Whether, and in what manner, the table of benefices, of which mention is made in the prayers, is to be included in the case. RESOLUTION. The Sacred Office of the Council, having considered the matter on July 21, 1888, decided to respond: Negatively. FROM THE SACRED CONGREGATION FOR RITES, DECREE concerning the Beatification or declaration of martyrdom of the Venerable Servant of God, Peter Aloysius Mary Chanel, Priest of the Society of Mary, Pro-Vicar Apostolic of Western Oceania, CONCERNING THE QUESTION: Whether it is established that there was martyrdom and the cause of martyrdom, and also concerning the signs, or miracles, in the case and to the effect of which we are speaking. By the counsel of Divine Wisdom, it was ordained that the truth of the Christian Religion, as it has been wonderfully strengthened from its beginnings by the blood of countless martyrs, should likewise increase through the same blood in subsequent and various ages, and thus, a conspicuous example should always be present to the followers of Christ, by which their love of faith may be inflamed. To this number of heroes, the Venerable Peter Aloysius Mary Chanel is to be added. He was born in the third year of this century, on the twelfth day of July, in the village called Cuet, within the territory of the Diocese of Bellicensis, and from his early years, he showed innocence and gentleness of character, and a love of religion, which foreshadowed what he would become.

[*Latin ed. p. 319*]

DECREE 319. The defender of Catholic truth, initiated into the Sacred Orders by God's call, shone forth with such brilliance of virtues, that he deserved to be chosen by his Bishop for distinguished duties. But, according to the will of God, who had given him this mission, he was transported from the shores of Galliae to the island of Futuna in the year 1837, by the Society of the Marists, to whom the Apostolic See had entrusted the sacred missions of Western Oceania; where, as the missionary companions departed to various parts of that region, he remained there alone with a lay companion. First received with kindness by the king of the island, he lived happily with him for two years; and, having become proficient in the local language, he strove constantly to convert him to the faith of Christ. But, as the king was also a priest of his own people, and as he saw many embracing the Christian religion through the preaching of Peter Aloysius, his love turned to hatred. Therefore, he ordered the Venerable Priest to be removed to another village, and he deprived him of all sustenance and assistance. Unmoved by this, the Evangelical worker provided for himself through cultivation and labor. But the barbarian people, enemies of the Christian name, destroyed everything. And their anger grew more intense as the number of believers increased daily, listening to the preaching of the

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Word of God, among whom the king's own son was counted. Therefore, having devised a plan to exterminate the Venerable Priest along with the religion, the king, by order of his father, commanded his furious servants to seek out God's servant above all others to put him to death. Finding him alone at home, they brutally beat him with clubs, pierced him with a spear, and finally, with a saw, they dismembered him, cutting into his skull to reach his brain. Thus, this most acceptable sacrifice to God was immolated in the very manner in which victims are sacrificed. Thus, the good shepherd endured death, which he had long desired for the sake of his flock, with joy in his heart, on the twenty-eighth day of April of the year 1841. Shortly afterward, the king and his brother, and several other persecutors, met a terrible death, which was considered by all to be a punishment for their crimes, inflicted by divine judgment. The other islanders, even those who had been the authors and supporters of the murder, embraced the same faith, and gave a splendid testimony to the martyrdom; and so that this marvelous event might be further confirmed, the blood of the martyrs proved to be the seed of Christians. There were no signs lacking from heaven to confirm the glory of the martyr. Concerned to record all of these things, the Apostolic Prefect of Futuna prepared a written account. This, when brought to Rome, and examined by His Holiness Pope Pius IX, along with authentic documents transmitted from the Apostolic Vicar of Oceania, a formal investigation was held, according to...

[*Latin ed. p. 320*]

320 The Decree, containing the special opinion of the Congregation of Sacred Rites, which had been established for this purpose, was signed by Me on the most blessed Thursday of September, in the year 1857. After the necessary apostolic acts had been completed, and minor questions had been settled, it was granted by the Most Holy Pope Leo XIII, that a question regarding martyrdom and the cause of martyrdom might be proposed together with another concerning signs, or miracles. Thus, in each case, a more rigorous examination was held first in the Preliminary Congregation, under My direction, as Cardinal Dominic Bartolini, Prefect of the Congregation of Sacred Rites and Relator of the Cause, on the eleventh day before the Kalends of July, in the year 1881. Then, in the Preparatory Congregation in the Apostolic Palace at Vatican, on the seventh day before the Kalends of March, in the year 1886, a hearing was held. Thirdly, in the General Congregation before the same Most Holy Pope Leo XIII, in the Vatican buildings, on the twelfth day before the Kalends of September of the recently elapsed year. In which, through the Most Reverend Cardinal Angelo Bianchi, Prefect of the Congregation of Sacred Rites, and Relator of the Cause, having replaced Me, the late Most Reverend Cardinal Bartolini, the following question was proposed: Whether it is established that there was martyrdom, the cause of martyrdom, and also signs or miracles, in the

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case and to the effect of which we are speaking. The Most Reverend Cardinals and Consultors then gave their opinions. After hearing these opinions, the Most Holy Pope postponed giving his final judgment, until He had prayed for a longer time to Almighty God. But today, on this Sunday, the last after Pentecost, which this year coincides with the commemoration of the glorious Virgin and Martyr Catherine, after the unbloody Sacrifice, while sitting in the Pontifical Basilica at Vatican, with the Most Reverend Cardinal Angelo Bianchi, Prefect of the Congregation of Sacred Rites and Relator of the Cause, present, together with the Reverend Father Augustine Caprara, Promoter of the Faith, and Myself, the undersigned Secretary, He decreed: That the martyrdom and the cause of martyrdom of the venerable Servant of God Peter Aloysius Mary Chanel are established, and that they are illuminated and confirmed by many signs and miracles from God. And He ordered that this Decree be made public and be recorded in the acts of the Congregation of Sacred Rites, on the seventh day before the Kalends of December, in the year 1888. A. Card. BIANCHI, Prefect. S. B. C. Laurentius Salvati, Secretary.

[*Latin ed. p. 321*]

321 LETTER from the Most Holy Pope Leo XIII to the Archbishop of Tours; in which certain authors of ephemeral publications are admonished concerning the obedience due to Bishops, as pastors of the flock of the faithful. It is indeed distressing and grave to treat those with severity who ought to be cherished as children; yet, it is sometimes necessary to do so, for those who are bound to diligently safeguard the salvation of others. And there is a greater need for severity when it is feared that, with the passage of time, more serious inconveniences may arise, and that offense may spread more widely among the good. Such causes, venerable brother, seem to have recently prompted you to issue a certain written admonition, which is certainly to be condemned, as it was injurious to the sacred authority of the bishops, and did not single out any one of them, but rather many: and the manner in which their actions and governance were described was so harsh and almost brought them into judgment, as if they had failed in the highest and most sacred duties. Indeed, it is in no way permissible for laymen, who profess to be Catholics, openly to arrogate to themselves, in the pages of newspapers, the right to freely judge and speak of any person whatsoever, not even of bishops; they may think and act as they please in all matters, except those which touch upon the divine faith. In this matter, venerable brother, there can be no doubt as to why you hesitate about our assent and approval. For it is the very duty of Our office to watch over and ensure that the divine power of the bishops remains entirely safe and inviolate. It is also Our duty to command and to ensure that this power flourishes everywhere with its due honor, and that nothing is lacking in the just obedience and reverence shown by Catholics in any respect. For the divine edifice, which

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is the Church, truly rests, as on a conspicuous foundation, first upon Peter and his successors, and next upon the Apostles and the bishops who are successors to the Apostles; and he who hears or rejects this is doing the same as if he were to hear or reject Christ the Lord. The part of the Church which consists of the bishops is by far the most august, for it is by them that men are taught and governed by divine law; and therefore, whoever resists them, or stubbornly refuses to listen to them, is receding further from the Church (1). And indeed, obedience is not to be limited by boundaries, in matters pertaining to the Christian faith (1) Matthew 13:17. Acts, Vol. XXI, page C C XLVI. 21.

[*Latin ed. p. 322*]

322 Letters pertain to matters, but far more importantly, to things concerning souls, whatever the episcopal authority encompasses. They are indeed masters of the holy faith in the Christian people, but they also preside as rulers and leaders, and they preside in such a way that concerning the salvation of those souls whom they have received from God, they themselves must sometimes render an account to God. Hence, the exhortation of the Apostle Paul to the Christians: "Obey your leaders and submit to them; for they watch over your souls as those who will give an account of them" (1). — It is indeed clear and evident that there are two orders of people in the Church, one distinct from the other in its nature: pastors and the flock, that is, rulers and the multitude. The duty of the former order is to teach, to govern, to regulate discipline of life, to give precepts; while the duty of the latter is to obey, to submit, to follow the precepts, to show honor. But if those who ought to submit take upon themselves the functions of those who are of the superior order, they not only act rashly and unjustly, but, as far as is in their power, they subvert the order established by the Author of the Church, God, in the most provident manner. — If, however, someone should be found within the very order of bishops who is not mindful of the dignity of his position, and who seems to have neglected some part of his duty, let him not, for that reason, relinquish his authority; and as long as he maintains communion with the Roman Pontiff, it is certainly not permitted to anyone to diminish obedience or respect towards him. On the contrary, to inquire into the actions of bishops, and to expose them, in no way pertains to private individuals; but only to those who hold authority over them in the sacred order, especially to the Supreme Pontiff, to whom Christ has not only entrusted the sheep, but also all those who are everywhere, for their feeding. Finally, in matters of serious complaint, it has been granted to refer the entire matter to the Roman Pontiff; but this should be done cautiously and moderately; as the common good suggests, not by clamoring or reproach, by which means discord and offenses are truly engendered, or certainly increased. These points, which are of the utmost importance, which cannot be torn away, we have had to recall and

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impress upon you not once, but many times. Your letter to our legate in Gallia, which you have conveniently published again, and others sent to the Archbishop of parisiensem, to the bishops of Belgii, to some in Italia, and two others (1) Hebrews xiii, 17.

[*Latin ed. p. 323*]

LETTERS 323. Encyclical Letters to the bishops, both of France and of Spain. We again recall and impress upon you these documents, trusting greatly that, through our admonition and authority, the sentiments aroused among you during these days will remain, be strengthened, and find rest in faith, in obedience, and in the due reverence owed to those who are entrusted with the sacred power in the Church. — Indeed, those who should be considered to be failing in their duty are not only those who openly reject the authority of their pastors, but also those who, through cunning, tergiversation, and oblique, concealed designs, oppose and resist. True and sincere obedience consists not merely in words, but primarily in the mind and will. — Furthermore, since the fault concerns a certain ephemeral publication, we must, without fail, again urge the authors of Catholic publications to observe and revere the documents and prescriptions mentioned above, as if they were holy laws, and to not deviate from them in any way. Moreover, let them be firmly convinced and persuaded that, if they should ever dare to disregard this established purpose and indulge their own judgment, whether by anticipating what the Apostolic See has not yet decided, or by undermining the authority of the bishops, arrogating to themselves an authority they do not possess, they will utterly fail to maintain the honor of the Catholic name, or to be of any benefit to the most sacred and most noble cause which they have undertaken to defend and promote. — Now, since we most earnestly desire that those who have erred may return to soundness, and that obedience to the sacred pastors may be deeply ingrained in the minds of all, we impart to you, venerable brother, and to your entire clergy and people, this apostolic blessing, as a testament of paternal benevolence and charity, in the Lord. Given at Rome, at St. Peter's, on the 17th of December, in the eleventh year of Our Pontificate, LEO XIII. LETTER from His Holiness Pope Leo XIII to all the Bishops and faithful of the Catholic Church, on the occasion of the approaching end of the year marking the fiftieth anniversary of his priesthood. As the year draws to a close, and we have safely completed the fiftieth anniversary of our priesthood, through a singular divine grace and benefit, our mind spontaneously turns to the space of the past months, and reflects greatly...

[*Latin ed. p. 324*]

324 The memory of this entire period brings great joy. — And not without reason: for the events which concerned Us personally, though not in

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themselves great, nor remarkable for any newness, moved the hearts of men in an unusual way, so abundantly were they marked by signs of joy, and so lavishly were they celebrated, that nothing greater could have been desired. — This, of course, was a matter of great pleasure to Us, and a source of delight; but what We value most in it is the expression of goodwill, and the freely given testimony of faith and constancy. For the chorus of greetings from all sides clearly demonstrated that minds and hearts from every place were intent on honoring the Vicar of Jesus Christ; that, amidst so many widespread evils, men confidently looked to the Apostolic See, as to a perennial and incorruptible source of salvation; and that, wherever the name of the Catholic Church is spoken, the Roman Church, mother and teacher of all the Churches, is held in esteem, observed, and cherished, with ardent zeal and the utmost concord. — For these reasons, during the past months, We have not infrequently looked up to heaven, to offer thanks to God, the most good and immortal, for having so graciously granted Us this opportunity to live, and for having bestowed upon Us, as a solace for our cares, the things which have been mentioned; and at the same time, when the occasion presented itself, We have expressed Our favorable sentiments to those to whom they were due. Now, at the close of the year and the renewal of the festivities, We are reminded of the benefits received, and it so happens that the entire Church joins with Us in giving thanks to God. At the same time, We desire to publicly testify through these letters, that the testimonies of so much obedience, humanity, and love have been of no small value in alleviating Our cares and anxieties, and that the memory of them, and the gratitude they inspire, will always remain with Us. — But a greater and more sacred duty remains. In this affection of hearts, in the eagerness with which the Roman Pontiff is honored and revered in a manner unusual, We seem to perceive a sign, and to recognize the influence of Him who often, and indeed alone, can draw great good from the smallest of things. For the Provident God seems to have willed that, amidst so much error of opinion, faith should be aroused, and that an opportunity should be provided for promoting a better life among the Christian people. — Therefore, it remains for Us to strive that, with good beginnings made, good things may follow; and to endeavor that both the divine plans may be understood, and that they may be accomplished in reality. Then, and only then, will obedience to the Apostolic See be fully and completely perfected, if, joined with the praise of Christian virtues, it leads to the salvation of souls; a fruit which alone is to be sought, and which must always remain.

[*Latin ed. p. 325*]

LETTER 325. From this highest rank of the apostolic office, in which Divine Providence has placed Us, We have frequently, as it was fitting, undertaken the defense of truth, and We have endeavored to expound those doctrines which seemed most suitable and beneficial to the common good,

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so that each person, having perceived the truth, might avoid the pernicious influences of error, by vigilance and caution. Now, as a most loving parent treats his children, so We wish to address all Christians, and to exhort each individual, through this discourse, to strive for a holy life. For, besides the profession of faith, the arts and practices of Christianity, and the virtues themselves, are absolutely necessary for a Christian; from which not only depends the eternal salvation of souls, but also the genuine prosperity and firm tranquility of human society. Indeed, if one were to inquire how life should be lived, it is clear that it greatly deviates from the evangelical precepts, both in public and private matters. It seems very fitting for this age that saying of the Apostle John: "All that is in the world, is the lust of the flesh, and the lust of the eyes, and the pride of life" (1). For most people, forgetting their origin and their calling, devote all their cares and thoughts to these weak and fleeting things: against nature, and with a disordered arrangement; they serve those things in which reason itself declares that man ought to rule. The appetites for comforts and pleasures are accompanied by a desire for things suitable to attain them. Hence, arises the unrestrained greed for money, which makes those who are caught in it blind, and rushes to acquire what it desires, often without any regard for justice or fairness, and not rarely with a haughty disdain for the poverty of others. Thus, many of those whose lives are surrounded by riches, usurp the name of fraternity with a multitude, whom they contemptuously disregard in their innermost feelings. And in a similar manner, the soul, puffed up with pride, refuses to be subject to any law, and tries to deny any authority whatsoever: it calls its own love freedom. It considers itself to be freely born, like a foal of an ass (2). Furthermore, there are the temptations of vices and the pernicious invitations to sin; we understand theatrical performances to be impiously and licentiously arranged; books and newspapers are composed to mock virtue and promote vice; even the arts themselves, which were invented for the honest use of life and the pleasant enjoyment of the mind, are ordered to minister to the lusts of desires. And it is not permitted to look to the future without fear, because new seeds of evil are constantly being gathered, as it were, into the bosom of youth. We know the customs of schools (1) 1 John 2:16. (2) Job 21:12.

[*Latin ed. p. 326*]

326 SECULAR LETTERS: Nothing remains of ecclesiastical authority in these matters; and at a time when the most tender minds should be diligently and earnestly instructed in Christian duties, the precepts of religion are often silent. Those of greater age face an even greater danger, namely, from a corrupt doctrine, which is often of such a nature that it is not intended to instill true knowledge, but rather to deceive the youth with false opinions. In teaching, many philosophers prefer the sole guidance of reason, completely setting aside divine faith; and by removing this greatest

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and most abundant source of light, they stumble in many ways, and do not perceive the truth. They hold that all things in this world are material; that the origins of men and animals are the same, and that they have a similar nature; and there are those who doubt whether the supreme Lord of all things, the Creator of the world, exists, or who err in his nature, in the manner of the Gentiles, most wickly. Hence, the very essence and form of virtue, justice, and duty must be changed. Thus, while they gloriously proclaim the supremacy of reason, and magnify the subtlety of intellect beyond what is fitting, they suffer the deserved penalties of pride through ignorance of the most important things.

With the mind corrupted by false opinions, a kind of corruption, like a disease in the veins and marrow, settles in, and it is not easily healed in this type of person, because, on the one hand, false opinions corrupt the judgment of what is right, and, on the other hand, the light of Christian faith is absent, which is the foundation and principle of all justice. We daily, in a way, contemplate the calamities that human society has suffered for such reasons. The poisons of doctrines have spread throughout life and public affairs: rationalism, materialism, and atheism have given rise to socialism, communism, and nihilism; these are indeed dark and fatal plagues, but which were not only consistent with, but almost necessary, to arise from those principles.

Indeed, if the Catholic religion is rejected without impunity, whose divine origin is so clearly evident by numerous signs, what reason is there why any form of religion should not be rejected, when it is clear that it lacks such signs of assent? If the soul is not distinct from the body in nature, and therefore, if, with the passing of the body, there is no hope of a blessed and eternal life, what reason is there for undertaking labors and sufferings, so that they may become obedient to reason? The highest good of man will be placed in enjoying the pleasures of life and acquiring delights. And since no one is without the prompting of nature to live happily, rightly, everyone will deprive themselves of—

[*Latin ed. p. 327*]

LETTER 327: It is fitting that each one should seek the means to live a blessed life, even if it requires taking from the possessions of others. But no power can restrain so completely the desires of men, so as to be able to fully curb inflamed passions; for it necessarily follows that the force of the laws will be broken, and all authority weakened, if the supreme and eternal reason of God, which commands and forbids, is rejected. Thus, the civil society of men must be utterly disturbed, driven by insatiable desire into perpetual conflict, with some striving to defend what they have acquired, and others striving to obtain what they desire. This is almost the condition of our age.

However, there is something by which we can console ourselves in the

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face of present evils, and raise our spirits with the hope of a better future. For God created all things, and He made the nations of the earth healable (1). But just as all of this world can be preserved only by His providence and by His will, by which it was founded, so too, men can be healed only by His power alone, by whose benefit they are brought from death to life. For indeed, Jesus Christ redeemed mankind once, with His abundant blood, but the virtue of such a work and such a gift is eternal and perpetual: and there is no salvation in anyone else (2). Therefore, those who strive to extinguish the growing flame of popular desires by opposing the laws, indeed contend for justice; but they must understand that they will consume their labor to no avail, or at least with very little fruit, as long as they stubbornly refuse to embrace the virtue of the Gospel, and are unwilling to accept the help offered by the Church. The healing of evils lies in this: that, by changing their plans, both privately and publicly, they may return to Jesus Christ, and to the Christian way of life. Indeed, for the entire Christian life, it is necessary constantly to resist and oppose the corrupt customs of the world. This is declared by the author of our faith, and by the perfecter of all the words, deeds, laws, and institutions of Jesus, His life and His death. Therefore, however far we may be drawn away by the wickedness of nature and of morals, we must strive towards the goal, armed and prepared, with the same spirit and with the same weapons as He, who, for the joy that was set before Him, endured the cross (3). Therefore, let men first see and understand how alien it is to the profession of the Christian name to pursue, as is the custom, those pleasures, to abhor those who practice virtue, and to refuse nothing to themselves that is pleasing and delightful to the senses. For those who are Christ's, must crucify their flesh (1).

(1) Sap. I, 14.

(2) Acts I, 12.

(3) Heb. XII, 1, 2.

[*Latin ed. p. 328*]

328 Letters [of the spiritual life] are intertwined with vices and concupiscences (1); thus, it follows that in Christ, there is no place for the exercise of patience and the habit of enduring, along with the gentle and delicate pleasures. For man, through the infinite goodness of God, has been restored to the hope of immortal good things, from which he had fallen; but he cannot attain these things unless he strives to follow in the footsteps of Christ, and he conforms his mind and his manners to the example of Christ. Therefore, it is not a counsel, but a duty, not only for those who desire a more perfect way of life, but for all, to carry the mortification of Jesus in their own bodies (2). — How can the law of nature, which commands man to live virtuously, be maintained if this is not done? For although sin, which is contracted at birth, is removed by the sacred baptism, the distorted and corrupt roots which sin has sown are by no means removed. That part of

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man which is devoid of reason, although it cannot harm those who resist it with courage through the grace of Jesus Christ, nevertheless struggles with reason for supremacy, disturbs the entire state of the soul, and with tyrannical force twists the will away from virtue, so that we cannot avoid vices or fulfill our duties without daily struggle. But this concupiscence or passion remains in the baptized; this Holy Synod acknowledges and feels; and although, when the struggle is left behind, it cannot harm those who consent, yet it is powerless against those who resist it courageously through the grace of Jesus Christ; indeed, he who has legitimately fought will be crowned (3). — There are degrees of fortitude in this struggle, through which virtue is attained only with excellence, namely, by those who have cast aside the movements that are averse to reason to such an extent that they seem almost to live a heavenly life on earth. Let this excellence be found in few; but, as the ancient philosophers taught, everyone should have dominion over his desires; and this, all the more, for those to whom daily use of earthly things provides greater temptations: unless someone foolishly believes that less vigilance is needed where the danger is more imminent, or that those who are more seriously ill need less medicine. — But he who undertakes such a struggle is rewarded with great benefits, besides the heavenly and immortal goods: first of all, because in this way, by calming the disturbances of the parts [of the soul], much is restored to nature of its former dignity. For it is according to this law and this order that man is created, that the soul should rule the body, and that appetites should be governed by the mind and by counsel.

(1) Galatians 5:24.

(2) 1 Corinthians 15:40.

(3) Council of Trent, Session V, Canon 5.

[*Latin ed. p. 329*]

LETTER 329, which leads to the fact that one desires not to surrender to the worst masters; the most excellent and most desirable freedom is that. Furthermore, in the very society of the human race, it is evident what can be expected from a man without this affection of the soul. Will he be inclined to merit well, who will have become accustomed to doing, avoiding, and measuring things according to the love of himself? No one can be magnanimous, beneficent, merciful, or abstinent, who has not learned to conquer himself, and to despise all human things for the sake of virtue.

Nor shall we be silent, that it seems entirely provided by divine providence that no salvation can be offered to men, except with struggle and pain. Truly, if God gave freedom from sin and forgiveness of errors to the human race, He gave it according to this law, that His Only-Begotten Son might satisfy for the just penalties due to Himself. And although divine justice could have been satisfied by Jesus Christ in other ways, He nevertheless preferred to satisfy through great torments, and a life poured out.

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And thus, He imposed this law upon His disciples and followers, ratified by His blood, so that their life would be a certain and perpetual witness to the virtues and customs of the times. What made the Apostles invincible in spreading the truth throughout the world? What strengthened countless martyrs in the bloody testimony of the Christian faith? Was it not that affection of the soul that obeyed this law without fear? No other path was open to those who sought to live according to Christ and to care for their own virtue; nor, therefore, is any other path open to us, if we wish to consider the salvation of our own individual selves, or the salvation of all. Therefore, since wickedness and lust dominate, it is necessary for each man to defend himself manfully against the blandishments of luxury; and since there is so much insolent display in enjoying riches and resources, the soul must be protected against the deceptive allurements of extravagant wealth, lest, being captivated by those things which are called goods, which cannot satisfy him, and which are soon to vanish, he lose the treasure that is not lacking in the heavens. Finally, it is also to be lamented that pernicious opinions and examples have had such an effect in softening the hearts of men, that many are now almost ashamed of the name and life of Christians; which is either lost depravity, or the most inert sloth. Both are detestable, both are such that there is no greater evil for a man. What salvation would remain, or on what hope would men rely, if they were to cease to glory in the name of Jesus Christ, if they were to refuse to live according to the precepts of the Gospel, constantly and openly? It is commonly said that the world is barren of strong men. Let Christian morals be restored: then gravity and constancy will be restored to men. But the magnitude and variety of virtues—

[*Latin ed. p. 330*]

330 Letters are not sufficient in themselves. Just as the body requires daily bread to be nourished, so too does the soul need to obtain divine strength and fortitude to be strengthened in virtue. Therefore, that common condition of life, which we have said consists in perpetual struggle, necessarily includes the need to implore God. For what is truly and aptly said by Augustine, that pious prayer transcends the intervals of the world and calls down divine mercy from heaven. Against the turbid movements of concupiscence, against the snares of evil demons, we are commanded by the divine oracle to seek help and heavenly assistance, lest we be ensnared in deceit (1). How much more necessary is this, if we wish to be useful in contributing to the salvation of others? Christ the Lord, the only-begotten Son of God, the fount of all grace and virtue, first demonstrated by His own example what He commanded in words: He spent the night in prayer to God (2), and He prayed more earnestly before the sacrifice (3). – Indeed, the fragility of human nature would be far less frightening, nor would morals languish and vices flourish, if this divine precept were not so

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often neglected and, almost, treated with disdain. For God is merciful, He desires to do good to men, and He has openly promised that He will give generously and abundantly to those who ask for His gifts. Moreover, He Himself invites us to ask, and He almost urges us with loving words: "I say to you, ask, and it will be given to you; seek, and you will find; knock, and it will be opened to you" (4). That we may not fear to utter these words with confidence and familiarity, He tempers the majesty of His divine nature with the likeness and image of the most loving Father, for whom nothing is more dear than the love of His children. "If you, who are evil, know how to give good gifts to your children, how much more will your heavenly Father give good things to those who ask Him" (5). Therefore, those who have considered this will not be surprised if the efficacy of human prayers seems so great to John Chrysostom, that he believes it can be compared to the very power of God. For just as God created the universe by His word, so man obtains, through prayer, what he desires. Nothing is more readily attainable through prayer, because within them there are certain elements that, as it were, move God and make Him easily appeased. For when we pray, we recall the soul from earthly things, and we direct it to the one God.

(1) Matthew 26:41.

(2) Luke 6:12.

(3) Luke 22:43.

(4) Luke 11:9.

(5) Matthew 7:11.

[*Latin ed. p. 331*]

LETTER 334. Being suspended by affliction, we are held by the consciousness of human weakness; and for this reason, we yield to the goodness and embrace of our Father, and we seek refuge in the virtue of the Creator. We insist on approaching the Author of all good things, as if we wished to be seen by Him, our afflicted mind, our feeble powers, our destitution; and filled with hope, we implore His protection and aid, who alone can provide medicine for illnesses, solace for infirmities, and relief from miseries. With such a disposition of mind, modest, as is fitting, and submissive in judgment, God is wonderfully inclined to mercy, because just as He resists the proud, so He gives grace to the humble (1). Therefore, let the practice of prayer be sacred among all: let mind, soul, and voice be employed in prayer; and let the manner of living be such that we may manifestly appear to ascend to God perpetually through the observance of divine laws. Just as the other virtues, so also this one, of which we are speaking, is born and sustained by divine faith. For God is the Author of those things which are true for man, and of those goods which are to be sought only through Him; and likewise, we have learned of the infinite goodness of God, and of the merits of our Redeemer Jesus,

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through the same Author. But, in return, there is nothing more suitable or more effective for fostering and increasing faith than the pious practice of prayer. For this virtue, weakened in many, and extinct in many others, shows how necessary it is at this time. For it is through this that not only is correction sought for the salvation of individuals, but also the judgment of those things is awaited, without which cities cannot be peaceful and secure. If the multitude thirsts for immoderate liberty, if threatening rumblings of the populace erupt from all sides, if the inhuman greed for happiness never considers itself sufficiently satisfied, and if there are other evils of the same kind, then, as we have explained more fully elsewhere, nothing can better or more certainly help than the Christian faith. Let it be remembered that you should turn your thoughts and prayers to those whom God has appointed as helpers in the administration of His mysteries, having bestowed upon them divine power. If the causes of private and public salvation are investigated, there is no doubt that the lives and morals of clerics can have the greatest influence in both directions. Therefore, let them remember that they have been called by Jesus Christ, the Light of the world, and just as that Light illuminates the entire world, so it is necessary that the soul of the priest should shine (2). The light of doctrine is required in a priest, and not a vulgar one, because it is his duty to fill others with wisdom, to uproot error. (1) 1 Peter 5:5. (2) St. John Chrysostom, *De Sac.*, Book 1, chapter 3, section 1.

[*Latin ed. p. 332*]

332 Letters are a source of corruption, leading the multitude along the treacherous and slippery paths of life. Above all, innocence desires the company of instruction, especially because in the reformation of men, example avails far more than exhortation. Let your light shine before men, that they may see your good works (1). This divine sentiment certainly implies that such perfection and virtue must be present in priests, so that they may offer themselves as a mirror to those who behold them. Nothing more effectively instructs others in piety and devotion to God than the life and example of those who have dedicated themselves to the divine ministry: for when they are raised to a higher position, free from worldly concerns, others direct their gaze towards them, and draw from them what they should imitate (2). Therefore, since it is necessary for all men to be vigilant, lest they adhere to the rocks of vice, or pursue worldly things with excessive eagerness, it is clear how diligently and steadfastly priests must behave. Not only is it necessary to abstain from desires, but sanctity demands that they accustom themselves to rule themselves strictly, and that they compel all the powers of the mind, especially intelligence and will, which hold the highest place in man, to obey Christ. He who is prepared to renounce everything, should also include himself among those things to be renounced, indeed, above all else and principally, he must deny himself

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(3). Only when the soul is freed and made independent of all desire, will it finally conceive a zealous and generous desire for the salvation of others, without which it cannot adequately care for its own salvation. One desire, one pomp, and one pleasure, if in any way they could provide for the perfect people. This is achieved through much sorrow of heart and body, in labor and hardship, in hunger and thirst, in cold and nakedness (4). Such virtue is always strengthened and encouraged by the frequent contemplation of heavenly things, and the more they devote themselves to it, the more clearly they will understand the magnitude of the priestly duties, and their excellence and sanctity. They will judge how miserable it is that so many people, redeemed through Jesus Christ, should nevertheless fall into eternal ruin; and by divine contemplation, they will turn themselves more strongly to the love of God, and will stir up others.

(1) Matthew 5:16.

(2) Council of Trent, Session 22, chapter 1, on Reform.

(3) St. Bernard, Declamations, chapter 1.

(4) Ibid., book 4, on Consolation, chapter 2.

[*Latin ed. p. 333*]

LETTER 333. This is a most certain course to attain to common salvation. However, great care must be taken, lest anyone be deterred by the magnitude of the difficulties, or despair of healing because of the length of the evils. God's justice is most equitable and unchangeable, and He reserves rewards for good deeds and punishments for sins. Moreover, since nations cannot extend beyond the limits of mortal life, it is necessary that they receive due recompense for their actions on earth. Indeed, it is not new for prosperous success to befall a wicked state: and this happens according to God's just plan, who sometimes rewards commendable actions, for no nation is entirely devoid of merit, and thus is sometimes rewarded with such benefits, as Augustine observes happened in the city of Rome. However, it is certain that a prosperous fortune depends greatly on how public virtue, and especially that virtue which is the foundation of all others, namely justice, is cultivated. Justice exalts a nation; but sin makes people miserable (1).

It is not pertinent to consider victorious deeds in this place, nor to inquire whether any empire, while enjoying its own prosperity, may nevertheless have, as it were, a seed of misery hidden within its very depths. We wish to understand only one thing, a matter full of examples in history: that unjust deeds are sometimes preserved, and all the more so, the longer the offenses have endured. We are greatly comforted by the saying of the Apostle Paul: "All things are yours; and you are Christ's; and Christ is God's" (2). For the course of all mortal things is governed and directed by the secret will of divine providence, so that whatever happens to men may serve the glory

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of God Himself, and may be conducive to the salvation of those who truly and sincerely follow Jesus Christ. The Church is the mother and nurse, the leader and guardian of these people: and therefore, she is joined to Christ, her bridegroom, with the most intimate and unchangeable love, and is united with Him in the fellowship of struggles and the communion of victory. Therefore, we should not be anxious for the sake of the Church, nor can we be: but we are greatly concerned for the salvation of many who, haughtily rejecting the Church, are led to ruin by various errors; we are grieved for the sake of those nations which we are compelled to observe, averse to God, sleeping soundly in the foolish security of ignoring the supreme judge of all things. Nothing is too great for the Church... How many have attacked the Church and perished? The Church, however, transcends the heavens. Such is the greatness of the Church: it conquers when attacked, it overcomes when sought out by treachery, it struggles and does not fall, it contends in battle and does not yield.

(1) Proverbs xiv, 34.

(2) 1 Corinthians iii, 22-23.

[*Latin ed. p. 334*]

334 Letters. It is overcome (1). Not only is it not overcome, but it preserves intact that virtue which it derives from God Himself, the reformer of nature and the efficient power of salvation, and it remains unchangeable by any alteration of times. If this virtue has freed a world growing old with vices and lost in superstition, why not recall the erring? Let suspicions and disturbances sometimes arise: let all obstacles be removed, so that the Church, which is the possessor of its rights everywhere, may fulfill its duty of defending and propagating the benefits obtained through Jesus Christ. Then, indeed, it will be possible to experience and know to what extent the light of the Gospel extends, and what the power of Christ the Redeemer can accomplish. — This year, which is drawing to a close, has shown, as we said at the beginning, many signs of reviving faith. May such a spark grow into a strong flame, which, having consumed the roots of vice, may quickly pave the way for the renewal of morals and the attainment of salvation. We, indeed, entrusted with the mystical ship of the Church in such a stormy season, fix our mind and spirit on the divine governor, who, holding the rudder, sits unseen in the prow. You see, O Lord, how winds have risen from all sides, how the sea is horrified, stirred up by great waves. Command, we beseech You, who alone can, both the winds and the sea. Restore to the human race the peace of true name, which the world cannot give, the tranquility of order. May men, indeed, return to the due order through Your grace and impulse, restored, as it should be, in piety towards God, justice and charity towards their neighbors, temperance in themselves, and with their desires governed. May Your kingdom come, and may those also understand that they must submit to and serve You, who seek truth and

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salvation through vain labor. There is equity and paternal gentleness in Your laws: and to preserve them, You Yourself readily provide us with the easy means of Your power. Life on earth is a warfare, but You, having observed the struggle, help man to conquer, and You support the weak, and You crown the victorious (2). And with these sentiments, with a joyful, firm, and steadfast spirit, as a pledge of heavenly gifts and a witness to Our benevolence, We impart the Apostolic Blessing to you, venerable brothers, and to the entire Catholic clergy and people, earnestly in the Lord. Given in Rome, near St. Peter, on the very day of the Nativity of Our Lord Jesus Christ, in the year 1838, in the eleventh year of Our Pontificate. LEO XIII, Pope.

(1) St. John Chrysostom, *Homilies* after *Eutropius*, captured, number 1.

(2) Cf. St. Augustine, *In Psalm* 32.

[*Latin ed. p. 335*]

335 FROM THE HOLY CONGREGATION OF THE COUNCIL FOR THE DISPENSING OF INDULGENCES, THE REMISSION OF PENANCES, AND THE COMMUTATION OF OBLIGATIONS, May 19, 1888. By summary proceedings. A SUMMARY OF THE CASE. The Migliarli family, patrons of a simple benefice dedicated to Saint Angelo, established in the parochial church of Saint Vincent in the territory of Saint Damiano d'Asti, have claimed the revenues of this benefice. And in order to further consolidate their rights, and to secure the rights of all other patrons as well, they have expended the sum of 37,000 livres. To this must be added several other thousand livres, which the same family has spent on judicial and administrative proceedings, due to a long dispute with the other patrons. The endowment of the benefice consists of a civil and agricultural dwelling, an annual rent of 109 livres, and a fund of 63,000 livres. The obligations are as follows: four Masses in the church of Saint Vincent, and two in another parochial church of the same territory, dedicated to Saints Cosmas and Damian, each week; in addition, two sung Masses each year, and attendance at the sacred functions performed on feast days in the church of Saint Vincent; and finally, the distribution of thirty measures of grain, and half a load of hay from the morus-gelsis, for the benefit of the poor of the same territory, as often as the revenues of the benefice permit. No satisfaction was given for the obligations of the Masses from the year 1866 to 1875, and partially, that is, in two installments, from the year 1875 to 1885; then, and until the present time, the celebration of the Masses has again been absolutely suspended. Furthermore, the patrons, wishing to act according to their conscience, requested absolution from past transgressions, a reduction of the Masses from six to three each week, and the faculty of freely retaining all the assets of the benefice, in lieu of

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which the Bishop –

[*Latin ed. p. 336*]

336. Regarding the payment of a manual sum of 11,000 livres, whereby the annual revenue would be proportionately divided between two pastors, prepared to undertake the duties with the desired reduction. The Bishop testifies that these matters should be conducted with truth, and he commends them, with the support of the pastors, St. Vincent and SS. Cosmas and Damian. A Synopsis of the Discussion. And indeed, much depends on the granting of grace. As also, a special consideration is due to the offering made by the patrons. For if 11,000 livres are added to the 3,700 livres paid to the treasury and patrons, and to other thousands said to have been disbursed for other necessary causes, the total sum may amount to more than 50,000 livres. And although the patrons may seem to derive some benefit and profit from this, nevertheless, it seems prudent to consider human weakness. For this is what the dictates of prudence suggest. To this is added the fact that we are dealing with patrons, who, by sending a messenger and granting the church the freedom to dispose of its resources, seem to be relinquishing something, which ought to be taken into account. Nevertheless, opposed to the granting of grace are the rigor of justice, the positive law of the Church, the abusive retention of goods, and the most serious fault of the pastors, by which it came to pass that ecclesiastical revenues were received, and the burdens were not satisfied. Among these, justice and prudence, the Most Reverend Provincial Fathers in Rheims, had to decide what should be determined. RESOLUTION. The Holy Congregation, after deliberation on May 19, 1888, decided to respond: For the granting of absolution for past omissions, the sum of 500 livres is to be paid for the celebration of Masses; and also, for the reduction of burdens, the sum of three Masses per week; furthermore, for the granting of a composition, the sum of 12,000 livres is to be carefully and usefully invested by the Bishop, for the establishment of a new endowment for the benefice of St. Angel, in aid of the pastor, St. Vincent; so be it.

[*Latin ed. p. 337*]

337. PADUA. ABSOLUTION AND REMISSION OF MASSES. July 21, 1888. By summary prayers. SUMMARY OF FACTS. In the parish of Saint Thecla, located at Este 36, a certain number of masses are endowed, which, however, have not been fully satisfied in recent years. The pastor and the parish officials explain that, due to the increase in the thirty percent tax, the annual taxes on movable property and inheritances, and the expenses incurred in defending pious causes, although adverse fortune has diminished the assets and income of the legatees; moreover, a certain sum of money has often been diverted from the remaining funds and converted into support for poor priests who served the church, for the extinction of

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expenses of worship, and for the purchase of vestments which the church needed. Up to the year 1884, a total of 11,166 livres have been gradually deducted and diverted to other purposes than the application to masses. Furthermore, it is requested that 9,384 livres be remitted from this sum, and that 1,782 livres, insofar as they depend on taxes collected and to be collected, may be distributed within two years as stipends for masses. It should be noted that the Prefect of the Province, having reviewed the management of the parish and having discovered this debt owed to the pious legatees, exhorted the parish officials to seek absolution from the competent ecclesiastical authority, so that the administration may proceed correctly. The current parish officials promise that they will not in the future place their hands on the income of the legatees, also because today, from the increase in the alms collection, from 1.23 to two livres for each mass, a sufficient emolument has been given to the priests for their livelihood. The Ordinary, testifying to the truthfulness of these statements, commended the prayers. Records, Volume XXI, page 246.

[*Latin ed. p. 338*]

338. PADUA. A Synopsis of the Matter. GRACE SEEMS DUE. Therefore, there are two points concerning which grace is recommended and considered, namely: 1° the necessity that arose for raising a certain sum from the legacies, according to the titles specified in the deeds; 2° the actual and perhaps perpetual impossibility of restoring the pious cause. For it was not done without necessity that taxes and expenses of litigation were paid, nor without necessity that the stipends of priests were increased, and certain expenses for the worship were incurred. Indeed, concerning this point, it has been observed that the necessity of supporting the clergy who serve the Church is confirmed by the very grace that followed, by which the stipends were increased by two missals. If, therefore, the magistrates initially raised this sum of their own accord to help the priests, they indeed acted unjustly and abusively, but not without reason. And how could it be maintained, in the abstract, that the magistrates, along with the Church fabric, were obligated to restore the pious cause, and to restore, at least in some cases, the legacies? However, this seems impossible in practice. This is said in some cases, and not in all; because the increase that was made to pay taxes was to be made from the census of the legatees, if indeed the taxes affected the very inheritance of the legatees. As for the expenses of litigation, the magistrates could be held liable, according to the law, if they could prove that these expenses were converted to the benefit of the Church and the pious cause. Also, the Church fabric itself would remain obligated regarding the increase made for expenses of worship and the maintenance of priests. Nevertheless, since the Church fabric, both because it is under the guardianship of administration, and because it is not enriched, is hindered from making this restitution, the matter seems to have fallen into a case of

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impossibility.

[*Latin ed. p. 339*]

PADUA 339. THE REQUEST FOR GRACE SEEMS TO BE DENIED. However, it is greatly to be lamented that this abusive distortion of revenues goes against the intention of the founder and the law of the legators. Furthermore, it remains unclear whether the taxes, which are paid through the legators' contributions, burden the legators in their entirety, or whether they burden both the legators and the church building, or rather, only the church building. In the first case, the administrators would incur no censure; but in the other two cases, the diversion of funds would certainly be considered abusive. And regarding the impossibility, although it cannot be doubted that it actually exists, whether it can cease in the future, at least in part, has not been fully explored. Therefore, the matter was deferred. It was left to the judges to decide whether it would be more expedient to maintain the hope for a better future, preserving the debt in favor of the legators; or rather, whether it would be more useful to absolve the wrongdoing, erase the memory of the arbitrary management, and approve a new, legitimate administration. With these considerations in mind, the question was raised as to what response should be given in prayer.

RESOLUTION. The Sacred Congregation, having knowledge of the matter on July 21, 1888, decided to respond: "Regarding the grace requested, with caution concerning the faithful fulfillment of obligations in the future, a verbal agreement has been made with the Most Reverend [CONCORDIEN], concerning the naming of [JURIS NOMINANDI] or the convention. On August 18, 1888.

SUMMARY OF THE CASE. The chapter of the concordian cathedral on June 25, 1883, presented a humble petition to its Bishop, in which it requested the restoration of the ancient right of electing and presenting candidates for vacant canonical benefices. However, when the Bishop raised difficulties regarding this matter, the chapter, hoping to make the matter more pleasing to its Ordinary, and in order to avoid the expenses of litigation, unanimously insisted on the initial request for the restoration of the ancient right.

[*Latin ed. p. 340*]

340 CONCORDIEN. The prelate recalled the previous agreement; and, subordinately, he requested that an alternative right be granted to him concerning the provisions of the canonry, according to what is stated by Bouix concerning chapters. And for this reason, he also drafted a certain convention, which he proposed to the Bishop, and he implored that it be approved and signed by the same. But the Bishop, although he was not opposed to this convention, nor had he, either verbally with the chapter, or from the beginning, signified otherwise, nevertheless considered that

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he could not proceed solely with his own authority in approving this convention; and therefore, he submitted the aforementioned draft to the Sacred Congregation, noting certain points. With these circumstances, it was justly judged that the opinion of the Datary should be heard in this matter. The Datary: who, in a letter dated August 18, 1884, responded that the aforementioned convention was in full opposition to the Regulations of the Apostolic Chancery, and to the constitutions of the Roman Pontiffs concerning the reservation of ecclesiastical benefices. The chapter invoked the ancient right of custom; and therefore, it wished that, with the concordat between the Apostolic See and the Austrian Empire abolished, through which the matter of benefices was regulated, the ancient rights and privileges expressly abolished by the same concordat be restored. But to achieve this, the same chapter considered it opportune to resolve certain doubts relating to the concordat itself: namely, whether the Apostolic See, through the same concordat, intended to abolish or merely suspend private rights; and whether, with the concordat abolished, one should return purely and simply to common law; which would actually exclude the restoration of any private privilege, and consequently, it would not follow, as the chapter believes, that the election and collation of vacant benefices, with certain exceptions, should be carried out simultaneously, or alternatively, by the Diocesan Ordinary and by the Chapter, with equal suffrage and efficacy. Therefore, it becomes clear that this question does not pertain to the Apostolic Datary, but to the Congregation of ecclesiastical affairs; with which everything relating to this matter is to be referred.

[*Latin ed. p. 341*]

CONCORDIEN. 341. Concerning the Concordat, and where perhaps arguments might be found by which the merit and validity of the agreement, of which we are speaking, could be ascertained and determined. Then, on August 3, 1884, the first response was given, that proofs regarding the asserted right of election and presentation should be submitted by the chapter. This was immediately carried out by the chapter, which transmitted documents. Subsequently, the Reverend Father [was] consulted by the Extraordinary Congregation for Ecclesiastical Affairs, to report whether the Concordat of the year 1856 was considered to remain in force; and, if not, whether the aforementioned rights and privileges concerning the provision of vacant benefices had been suppressed or suspended by that same Concordat. To this, the following response was given: Regarding the first question, it was noted that the Government of Upper Italy, through circular letters of April 24, 1860, from Cassinis, Minister of Grace and Justice, had declared that the aforementioned Concordat had been annulled by the very fact of the annexation of Lombardy to the Kingdom of Sardinia. To ascertain the provisions adopted by the Apostolic See before the new additions, the Apostolic Datary should be consulted, which, it is said, es-

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tablished rules according to which the common right should be restored to its proper force regarding the collation of benefices in the Lombard-Venetian provinces. Regarding the second question, it seems that light can be drawn from Article 22 of the same Concordat, which reads as follows: "In all metropolitan, or archiepiscopal, and suffragan churches, His Holiness shall hold the first dignity, unless a private lay patronage exists, in which case the second shall take its place; for the other dignities and canonical prebends, His Majesty shall continue to nominate, except for those which are permanently of episcopal free collation, or which are subject to a legitimately acquired right of patronage." Therefore, on March 30, 1885, it was decided to respond: "Having considered everything, and paying particular attention to the resolution of the Sacred Congregation of the Council in the case of Campania, concerning the conferring of canonical offices, issued on January 31, 1880, it does not sufficiently appear that the chapter has a right regarding the election.

[*Latin ed. p. 342*]

342 CONCORDIEN. "ad praebendas vacantes, documenta adhibeantur, et hoc Episcopo notificetur." Sed cum hoc decretum capitulo communicatum fuerat, canonici mirum censuerunt, et ita responderunt. Ut hoc intelligatur, scire oportet quod Bouix, in tractatu de capitulis, sustinet canonicalium praebendarum provisionum, de iure communi, ad capitulum cum Episcopo pertinere; et alternativam electionis praxim, iuxta ea quae in suo schemate conventionis capitulum Concordiense proposuerat, aequiorem esse ac formam faciliorem ad ius commune applicandum. Capitulum autem Concordiense huic sententiae omnino confidens, putavit alternativam, utpote rem omnino canonicam, facilissime necessariam concessionem esse, praescindendo licet ab antiquis cathedralis ecclesiae privilegiis: unde ne supponebant quidem canonici obstacula adversum eam moveri. Quapropter, cum primum, die 3 Augusti 1884, praeceptum fuit, ut a capitulo documenta afferrentur super asserto electionis et praesentationis iure, canonici notaverunt se ea fore quidem transmissa, sed unice in superioris auctoritatis obsequium; quia ceteroquin documenta illa sunt omnino inutilia; dum capitulum ad consequendam alternativam electionis infra limites a saviis canonibus constitutos exhibere probationes non debet; eo quod agitur de stipulatione quae iure communi innititur. Novissime vero, cum rescriptum diei 30 Martii 1885 eidem capitulo communicatum est, canonici, novis litteris in antecessum congregati, primitivam suam instantiam super alternativa fuisse silentio praeteritam, ac deinde ita prosecuti sunt: "ex eo quod capitulum prospiciat, contra voluntatem, aliquo modo infirmata et imminuta iuridica vis suae antiquae praerogativae, quae non discutebatur, unanimi suffragio, ad omnem vitandam responsabilitatem, censuit recurrendum esse ad S. C. C., petens, ut recognoscatur suum ius electionis et praesentationis ad praebendas

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canonicales, eiusque liberum exercitium. Et infra attento etc. exorat ut agnoscatur legitima antiqua consuetudo."

[*Latin ed. p. 343*]

CONCORDIA, 343. Concerning the election and presentation of candidates, with due observance of the regulations, for canonical positions that become vacant, within a period of four months, not reserved by the rules of the Chancery, and so that the exercise of that right may be restored, except for the dignity of the deanship, which is the only one that remains, and which is reserved by law to the Roman Pontiff.

Regarding the right of election and presentation, the chapter recounts that in the fifteenth century, the Bishop Feletto attempted to impede and prohibit the chapter from exercising the right of election and presentation, which was already peacefully exercised by the chapter of Concordia at that time. However, contrary to the canons, a dispute arose. But after a better understanding of the situation, the Ordinary deemed it better to send a messenger to mitigate the dispute through this concordat, which is now inserted in its entirety:

"In the name of Christ, Amen. In the year of the Nativity of our Lord 1479, in the tenth Indiction, on the fifth day of the month of October, in the Episcopal Palace of Concordia, in the main chamber, in the presence of etc.

And since a dispute arose between the Reverend Father and the Most Reverend Anthony, by the grace of God, Bishop of Concordia, and the venerable gentlemen, the Dean and the Canons of the Chapter of Concordia, concerning the right of electing canons during vacancies in the Church of Concordia, and since it is unbecoming for a Father to dispute with his Sons, wishing to spare expenses and avoid enmities and other evils that often arise from disputes, the aforementioned parties came to this Concordat for the sake of peace; namely, that the aforementioned Reverend Bishop yields to the dispute and the claim promoted by the aforementioned Chapter concerning the aforementioned right of election, and expressly renounces to the aforementioned Chapter all right of electing or conferring canonical positions and benefices, and will not trouble or harass the aforementioned Chapter, so that it may freely elect, during vacancies, but rather promises to benignly confirm those elected by the aforementioned Canons and Chapter, duly and canonically and legally, when requested, according to the form of law, without any contradiction; and he does this all the more, because he sees that there have been many elections in past times..."

[*Latin ed. p. 344*]

344 CONCORDIEN. Having celebrated and confirmed, through the aforementioned Chapter, numerous confirmations of his predecessors, and understanding that the aforementioned right of election is conferred by law and ancient custom to the said Chapter, which otherwise would not

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pertain to his Most Reverend Lordship, and the dispute and controversy that arose between his Most Reverend Lordship and the aforementioned Chapter, rather arose because the aforementioned Bishop was ignorant of the rights of the Chapter, than for any other reason, since his will was never to abolish, nor to diminish, the rights of his Chapter, but rather, like a good father and gracious Lord, to increase them, even if the right of election, either by law or by custom, did not properly pertain to the Chapter. "Furthermore, without interruption and peacefully, the canons of Concordia have exercised their right, as evidenced by numerous legal documents dating from the year 1596 to January 7, 1805, and recorded in the acts, either in the original or in an authentic copy. These documents contain, either ancient chapter acts, in which mention is made of elections and nominations for the granting of one office or another; or episcopal bulls, by which persons elected and presented by the Chapter were accepted by the Bishops and instituted to benefices; or, finally, particular agreements between the Bishop and the Chapter regarding the manner of conducting elections. Meanwhile, the documents listed under nos. 2 and 6 deserve particular consideration, where the matter concerns theological and penitential elections made by the Chapter and accepted by the Bishop, after prior examination. Under no. 7 are cited episcopal bulls by which the aforementioned right of presentation to the Chapter is conferred; under no. 9, an agreement reached by the Chapter with the Bishop regarding the election of the Dean, and chapter acts of May 22 and June 1, 1789, from which it is evident that this agreement was properly carried out in practice. This document is also worthy of particular consideration, because mention is made therein of a fact which, according to what is stated, is also attested by other documents, but which is expressly referred to there, namely, that the Chapter of Concordia, from the beginning, has its right of presentation."

[*Latin ed. p. 345*]

CONCORDIEN. 345, as was fitting, did not exercise its right, except during the four months not reserved, according to the regulations of the Chancery; then, and precisely in the year 1769, when the government of the Republic of Venice decreed the observance of papal reservations within its domains, it ceased to diminish the number of canons and dignities. And thus matters proceeded until, on September 13, 1804, the Imperial and Royal Government of Venice appropriated to itself the provision of any canonry, whether of free collation or of patronage. This arbitrary and illegal measure persisted until the solemn promulgation of the Concordat in 1855 between the Holy See and the Austrian government, as is demonstrated by the attached document No. 12. The canons confess that further documents could have been added; however, they believe it superfluous to add more, having selected only certain items from the

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capitular and episcopal records. Therefore, from all of this, it seems reasonable to conclude that the Concordian chapter certainly had the right to elect and present candidates for vacant benefices. And, since the documents presented by the chapter in its favor appear entirely legitimate, and nothing is objected to the contrary, any further dispute regarding the existence of this ancient right of the chapter seems futile. Furthermore, it cannot be doubted that the effect of the violent civil law of September 13, 1804, by which the Imperial and Royal government of Venice appropriated to itself all provisions of canonries, and retained them until the year 1855, was such that the chapter was deprived of this right. For it is known that, on the one hand, dispossession does not invalidate legitimately acquired rights and titles of possession, and on the other hand, "time does not run when the law is invalid," and "prescription does not apply to those who are not legally empowered to exercise it." Therefore, in the hypothesis that, before the year 1804, the Concordian chapter certainly had the right of presentation, the chapter could not have been deprived of this right by the illegitimate and violent decree of the civil government.

[*Latin ed. p. 346*]

346 CONCORDIA. However, a difficulty arises from the following, namely, from the fact of the concordat of the year 1855 between the Holy See and the Ordinariate of Austria, imperial. Therefore, this matter must be considered with diligent study from this perspective; for the point of contention is most clearly turned in this direction. And the question that could be proposed is this: whether, through the concordat of the year 1855, the right of nomination and presentation of the chapter of Concordia was merely suspended, so that after the cessation of the concordat, it might revive; or rather, whether it is to be considered absolutely abrogated, so that, with the cessation of the concordat, it could not revive. However, the solution to such a question is not one that is easy or straightforward. Indeed, if the aforementioned faculty of nominating and presenting is considered a legitimate expression and disposition of common law, then the case would be settled. For when the concordatorial regime ceases, common law must necessarily be restored, whenever, in particular, common law is consistent with the usage and the state of the churches before the concordat, as has clearly happened in Thuringia. However, this theory does not seem certain, namely, that the aforementioned faculty of nominating and presenting is considered a canonical and ordinary disposition of common law for the provision of cathedral canons. Indeed, it is known from Fagnano, book I, decrees, chapter 31, that there are four opinions of the canonists regarding the provision of cathedral canons; the first is that of those who hold that, by common law, the collation of canons and the presentation of the cathedral church belong solely to the Bishop; the second is that of those who teach that it belongs to the Bishop with the consent of the chapter; the third is

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that of those who wish it to be with the consent of the Bishop, whenever all things are common, and with consent, when all things are divided; and the fourth is that of those who believe that, by common law, the collation of canons and the presentation in the cathedral church are simultaneous, that is, belong to both the Bishop and the chapter together. However, no one teaches that, by common law, the canonical provision...

[*Latin ed. p. 347*]

CONCORDIEN. 347 Your provision pertains to the Bishop, arising from the nomination and presentation of the chapter. Therefore, this practice, which is said to have prevailed in the church of Concordia, cannot in any way be considered a common legal arrangement or expression. Rather, since nomination and presentation for benefices primarily and most properly arise from the privileges of patronage, it should be understood that a true case of ecclesiastical patronage is involved in this matter. And indeed, all things concur and align in this sense. Certainly, 1. Patronage is defined with common consent as "the right of nominating or presenting a cleric to a vacant ecclesiastical benefice." Reiffenstuel, book 38, n. 3; Ferraris, v. Patronatus, art. 1, n. 2. This nomination must necessarily be carried out in chapters through the accepted form of election or scrutiny; hence, in this case, the right of nominating is confounded with the right of electing. But since patronage is defined in its essence as the right of presenting, it necessarily follows that it can legitimately be established through presentations duly and effectively carried out. Thus, Ferraris, art. n, 44 seqq., states: "Patronage is proven in various ways. And first, it is proven by presentations carried out for 40 years... 2. It is proven after enunciations exceeding 100 years and the memory of men... 3. Patronage is proven by the ancient judgment of a Bishop, by which he judged that a benefice pertained to the presentation of a certain patron... 4. Patronage is proven by the institutional letters of the Ordinary, by which it is attested that a benefice pertains to the presentation of a certain patron: for the assertion and confession of the Ordinary in the issued institution is considered sufficient proof of patronage... 6. Patronage is proven by the consents of patrons reserved and granted in several provisions." However, all of these are clearly verified in the case of the chapter of Concordia: it presents the ancient episcopal judgment, by which this right of nominating and presenting is recognized to it, the chapter acts, the episcopal bulls, and other things, which demonstrate that this right has been peacefully exercised for many centuries.

[*Latin ed. p. 348*]

348 CONCORDIA. Furthermore, the right of patronage, which belongs to clerics, is an ecclesiastical right, as stated in chapter 4 of *De iure patronato*, Schmalzgrueber comments on this title, number 8. Therefore, it

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is not doubtful that the chapters of Concordia pertain to ecclesiastical patronage. Finally, ecclesiastical patrons are subject to the apostolic reservations contained in Regulation IX of the Apostolic Chancery, as is evident from the clear provision of that regulation, as noted by Riganti in volume 2, page 33, number 444, along with Gonzalez and others. Therefore, the power of ecclesiastical patrons to freely nominate candidates is not permitted, except within the four months allowed to ordinary collators. And this was precisely the condition of the chapters of Concordia, until the Republic of Venice allowed the exercise of papal reservations within its domains: this is proven not only by the affirmations of the chapters, but also by the document mentioned above and other documents on record. However, since we are dealing with the case of ecclesiastical patronage, other subordinate questions arise, such as whether this right of patronage was extinguished or suspended by the Austrian concordat, and whether, after the cessation of the concordat, it was revived by right. In this matter, it is best to note that the right of patronage is nothing other than a grace or privilege granted by the supreme authority of the Church to founders and other individuals who have benefited the Church. This is well illustrated by Riganti in relation to Regulation 42 of the Apostolic Chancery, number 184 and following, and by Natalis Alexander in *Historia ecclesiastica saeculi VI*, chapter 6, article 3, number 8, who also recalls that this discipline first arose in Italy in the eighth century through the gracious dispensation of the Popes; for he says, "In the collation of benefices, you will find scarcely any traces of patronage in the churches of Italy in the sixth and seventh centuries." And although patronage is usually granted in recognition of the aforementioned merits, it nonetheless remains what it is, namely a privilege.

[*Latin ed. p. 349*]

CONCORDIEN. 349. Vilegium. Quoniam in administratione Ecclesiae, sacra et sollemnis est potestas ut provisiones de officis et beneficiis ad supremum Ecclesiae magistrium pertineant; unde, nisi ex peculiari benevolentiae causa et prudenti oeconomiae consilio, nominatio et praesentatione ad haec officia et beneficia privatis personis permittantur. Nec quidquam refert quod patronatus vocetur ius, et ministerio iuris, datis certis causis, acquiratur: quippe quod hoc nihil aliud significat, quam quod patronatus sit privilegium in corpore iuris clausum, ut pragmatici loquuntur; cuius rei non unum adest exemplum. De cetero, gratia licet ex certis rationum momentis certissime conferatur, non ideo gratia esse desinit. Age vero, si patronatus gratia et privilegium est, non debet suspendendum esse, sed absolute abrogari, quoties per concordatum sancitur beneficiorum provisiones a privatis patronis in Principem aut Episcopum aut Sanctam Sedem transferri. Docet enim Menochius, cons. 190, n. 18, cum Riganti, *De reg. cancel*, lib. 1, pag. 9,

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n. 79, quod privilegium statim et revocatur, cessat, quin amplius ex se reviviscere possit: — ibi — « Revocatum statim suum sortitur effectum, et illa privilegia sunt extincta, nec reviviscunt, nisi convalescentur. » Quod ceteroquin ipsi rectae rationi cohaerere prorsus videtur. At in themate iuris patronatus, de quo quaestio, haud videtur per concordatum abrogatum. Recolantur sane verba art. 22: « In omnibus metropolitanis seu archiepiscopalibus suis suffraganeisque ecclesiis, Sanctitas Sua primam dignitatem conferet, nisi patronatus laicalis privati sit, quo casu secunda substituetur. Ad ceteras dignitates et praebendas canonicas, Maiestas Sua nominare pergit, exceptis permanentibus iis quae liberae collationis episcopalis sunt, vel iuri patronatus legitime acquisito subiacent. » Porro, praebendae cathedralis ecclesiae concordiensis patronatu legitime acquisito erant, juxta dicta, subiectae. Quin dicatur hunc patronatum esse ecclesiasticum: quan-

[*Latin ed. p. 350*]

350 CONCORDAT. Since the cited article of the concordat does not distinguish, it must be said that both types of patronage are included. Even more so, because in the preceding part of the article, where the matter concerned the provision for the first dignity, the exception and distinction were properly made by the words "unless it be a private lay patronage." Therefore, the general wording in the second part of the article, preserved as indicating something opposed, takes on greater significance. And furthermore, considering the non-use from the year 1855, in which the violent disposition by the Venetian government, already established by the concordat, ceased, to the year 1883, in which the chapter first claimed the restoration of its ancient rights, the disputed patronage has been deemed extinguished by the lapse of thirty years. The answer is readily apparent. Indeed, if forty years are required to prescribe a church patronage; De Angelis ad lib. 3 Decret, tit. 38, with common opinion. And furthermore, the objection is raised regarding the resolution given by the Sacred Congregation in Campagna concerning the conferring of a canonry on January 31, 1880. However, the chapter argued that, rather than finding the best argument for its case, the resolution given by the Sacred Congregation in Campagna on January 31, 1880, in a case with almost identical circumstances, is the reason why it seeks to be restored to its ancient rights. It is therefore helpful to briefly recall the circumstances of that case. In the Campagna region, there was a collegiate church whose chapter had the right to present candidates for all benefices from time immemorial. This right was peacefully exercised until the beginning of the current century, when, due to the French invasion, the chapter was prohibited from exercising its ancient rights. With the restoration of peace, an agreement was entered into in 1818 between the Holy See and the King of both Sicilies, and in that agreement, article 10 stipulated that canonries of free collation were

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to be conferred, first by the Holy See, and then by the Bishops; that is, for the first six months by the Apostolic See, and for the following six months by the Bishops.

[*Latin ed. p. 351*]

CONCORDIA, 351. A controversy arose between the Archbishop and the Chapter concerning the interpretation of this article, and the matter was brought before the King, who, by a decree of May 2, 1824, stipulated that the resolution, previously given for the Chapters of Salerno, Montecurvini, and Eboli, should also apply to the Chapter of Campagna; that is to say, provided that, during the first half of each year, the Chapter maintained its favor with the Apostolic See, it should present candidates for vacancies in the first four months of the second half of the year, and the two remaining months should be free for the appointment of the Archbishop. Therefore, regarding the doubt as to who has the right to confer canonical appointments in this case, the Sacred Congregation of Councils responded: "Affirmatively, to those who, by law, are subject to the terms of the decree of May 2, 1824." Thus, having duly considered these and other matters arising from the aforementioned account, the following question was to be resolved: Whether the Chapter of the cathedral church of Concordia is to be restored to the exercise of the right of nominating and presenting candidates for all benefices, except for the dignity of Dean, during the months in which vacancies occur, in accordance with the law.

RESOLUTION. The Sacred Congregation of Councils, after deliberation on August 18, 1888, decided to respond: "Affirmatively."

FROM WHICH IT IS UNDERSTOOD:

I. Patronage is nothing other than a grace or privilege granted by the supreme authority to founders of benefices, and to other individuals who have rendered services to the Church.

II. It is certainly the prerogative of the supreme teaching authority of the Church to provide for offices and benefices; and therefore, unless for a special reason of benevolence, private individuals are permitted to nominate or present candidates for benefices.

III. Although the right of patronage is included in the body of the law, it does not cease to be such, even though it is certainly conferred based on certain considerations.

IV. The Roman Pontiffs can revoke such privileges or graces, and this revocation will certainly immediately have its intended effect.

[*Latin ed. p. 352*]

352 CONCORDIEN, V. Quotiens provisiones beneficiorum a privatis patronis ad Principem aut Episcopum transferuntur, dictis privilegiis, per

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concordata, revocari et suspendiri licet. V I. Capitulum concordiense redintegratum, ut rite in exercitio iuris fuerit, quod per varia documenta apparet se per saecula exercuisse, et quod per concordatum abrogatum non videtur esse. ENGOLISMENSIS. DE FACULTATE CONDONANDI ET REDUCENDI ONAERA, die 18 Augusti 1888. Per summaria precum. COMPENDIUM FACTI. Ordinarius Engolismensis, Sanctae Sedem sequentem, exposuit, quod « nuperrime recurrebat ad eam favore hospitalis civitatis Rupefucaldi, suae Dioeceseos, et obtinebat condonationem missarum in eo fundatarum, et reductionem quoad futurum. Vix autem obtento S. Congregationis Concilii rescripto, et alii duo casus ex aliis Dioecesis locis ipsi delati sunt, qui et ipsi recursum ad S. Sedem exigèrent. Nunc, inquisitione summatiminstituta, sat multa per totam dioecesim male ordinata, quae simul exponenda voluit Sanctitati Vestrae, ut succurrere dignetur. » « Sunt fundationes, quarum fundus diminuitus est, vel etiam penitus consumptus, plerumque inculpabiliter, quandoque vero ex inscitia aut negligentia administratorum, qui pecuniam in solvenda ecclesiae debita, vel in eam reparandam consumpserunt; et onera vel de praeterito adimpleta non sunt, vel in praesens non habetur quod eis adimplendis sufficiat. Quandoque etiam defunctorum haeredes redditus solvere renuunt ad implenda onera, nec utiliter cogi possunt. – Demum, non infrequenter fundus vel pecunia ab initio legata insufficiens erat, et tamen acceptata fuit ab administratoribus ecclesiarum, absque Episcopi approbatione, imo absque ullo ad eum recursu; quod vitium frequens fuit decursu prae-

[*Latin ed. p. 353*]

ANGOULEME. ”CCLIII missae saeculares, et haec non cessaverunt nisi postquam saepe iterum ius fuerat inculcatum, et post iterationes admonitionum ab Episcopo oratore. ”Fundationes autem huiusmodi, ut plurimum, sunt missarum lectarum tantum, coniunctis tamen aliquando missis cum cantu celebrandis, vel etiam addita obligatione officium defunctorum, certis diebus decantando. Interdum occurrunt simul, eiusdem testamenti lege, onera missarum cum aliis oneribus, v. g., certam partem reddituum erogandi in pauperes, aut lampadis coram Sanctissimo ardentis expensibus providendi, etc.” ”Episcopus orador putat expedire, ut generalis instituatur per totam dioecesim inquisitio de fundationum existentia, conditionibus et implemento, successive tamen et adhibito sui Vicarii generalis auxilio, ne labore revisionis supra modum gravaretur, et quaecumque minus recta reperta fuerint, ad iuris et aequitatis regulas, necnon Decretorum Sanctae Sedis sanctiones componantur.” ”Verum et aliud est Sanctitati Vestrae exponendum, quod et eius providentiam requirit. Sanctae enim Sedis indulta, dum reductionem missarum Episcopis concedunt, ut plurimum earum numerum ad taxam eleemosynae missae manualis definiendum volunt. Iamvero eleemosyna missarum manualium in Dioecesi Angouleme, unius libellae ab antiquo constituta, nostris temporibus admodum exigua

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facta est, nec sacerdotum inopiae sublevandae satis congrua. Licet in multis Galliarum Dioecesibus aucta fuerit, eam tamen universim augere Episcopus orador usque huc reformidat, ne exitus fieret peior, et adhuc decrescerent paucissimae fidelium suae Dioecesis oblationes ac missarum petitiones. Hinc ubi de oneribus missarum in hospitali Rupefucaldensi fundatarum reducendis recenter actum est, a Sanctitate Vestra obtinuit ut maiorem manualitaxam statuere posset. Idem et nunc expostulandum putat, non tamen omnibus in casibus erit necessarium; nam in quibusdam locis, quorum sacerdotes eleemosynis missarum non carent, si fundatorum descendentes vel consentiant vel non supersint, etc."

[*Latin ed. p. 354*]

354 ANGOULÊME. It will be more advantageous to grant that Masses, reduced to the amount of an alms, may be celebrated in other churches, always with the Bishop being informed beforehand of the fulfillment of the foundation's obligations. "Having stated all of this, the Bishop of Angoulême earnestly requests that Your Holiness grant him a broad faculty, for a period of five years only, to be exercised by himself or by his Vicars General, to remit, with regard to the past, and to reduce, with regard to the future, the burdens of foundations, whether these burdens consist of Masses recited, sung, or of the obligation to sing the Office for the Dead, or of other similar burdens, or if several such burdens occur in the same case, reducing even the alms of the reduced Masses to the amount of a perpetual Mass, according to the custom of the Diocese, or, if a smaller alms is sometimes deemed appropriate, granting to the rectors of the churches the power to arrange for the celebration of those same Masses elsewhere, and observing, thereafter, the rules transmitted by approved authors, and especially by Pope Benedict XIV in his work *De Synodo*. " Disputation Syiioptica. Therefore, the Ordinary of Angoulême receives a general faculty for five years, by which he may reduce several burdens, whether of Masses or of other pious works, with regard to the future, and remit them with regard to the past, if these have not yet been fulfilled, and cannot be fulfilled in the future. Indeed, in this matter, it is pertinent to recall that the Council of Trent, Session 25, Chapter 4, considered: "In some churches, a very large number of Masses may have been imposed because of various bequests left by the deceased, so that those who have made such bequests cannot fulfill them for each day as prescribed by the testators, or the alms for these Masses may be so small that it is not easily undertaken by those who wish to devote themselves to this ministry; therefore, an opportunity is given to burden the wills of the testators, and their consciences, to whom these pertain..." faculty;

[*Latin ed. p. 355*]

ENGOLISMEN. 355 It grants to Bishops, so that in a diocesan synod—

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after careful consideration—they may, according to their conscience, in those churches which they have determined, through this provision, to require it, decide concerning these matters whatever they deem most conducive to the honor and worship of God, and to the benefit of the churches; yet, it is always to be ensured that the memory of those who, for the salvation of their souls, left legacies for pious uses, be preserved.

Indeed, the Sacred Congregation, after consultation with the Fathers, on June 2, 1625, with the authority of Urban VIII and Innocent XI, confirmed by apostolic letters dated January 1, 1697, forbade and prohibited "that Bishops, in diocesan synods or in general chapters, or in any other way, reduce any burdens of celebrating Masses, or those imposed after the same Council of Trent, or at the very foundation [of a church]; but for all such reductions, modifications, or alterations, recourse must be had to the Apostolic See, which, after careful consideration, will decide what it deems most expedient in the Lord." However, this does not preclude the possibility that, for a just reason, and for a time, and for certain special causes, the faculty of reducing the burdens of Masses may be entrusted to Bishops, as delegates of the Apostolic See. The reason for which the Sacred Congregation withheld this power from Ordinaries, a power recognized by them through the œcumenical Council, was primarily because certain grave abuses had occurred in this matter, as clearly appears from the tenor of the apostolic letters mentioned above. Indeed, by predefining the extent of this power, both in time and in manner, the abuses that were the cause of the deprivation of this power might perhaps have been avoided. This seems even more to be held, if one considers the final words of the Ordinaries, in which they promise to observe the canonical laws and the doctrine which Benedict XIV explained concerning this matter in his work *De Synodo*. And this concerns the reduction of the burdens of Masses.

Regarding other pious works, according to the exigencies of the times and places, and various needs, they are to be determined by their own prudent judgment.

[*Latin ed. p. 356*]

356. ENGLISHMEN. It is demanded by the Ordinary that, if more could be said, it should be stated. Doctors dispute among themselves whether a Bishop, as delegate of the Apostolic See, can, for a grave and necessary reason, reduce these burdens of his own accord and substitute pious works. See D'Annibale Stimm, vol. 2, no. 379. Considering these matters, the question was raised as to what should be answered in regard to the prayers. RESOLUTION. The Sacred Congregation of the Council, having knowledge of the matter, on August 18, 1888, decided to respond: For the grace requested for five years, having made an agreement with the Most Reverend [Bishop], regarding the REDUCTION OF BURDENS on July 21, 1888. Through summary prayers. SUMMARY OF THE CASE. On January 17, 1888, Gregory

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Chiachiararelli, in his last will and testament, left to his own great-nephew, the Priest John Pasquazi, certain goods, which he enumerated individually, with this condition: "I wish that this priest, as long as he lives, should offer daily Mass for me and for my deceased parents, in the church which is called Madonna del Campo." And because, the testator said, "I desired that this daily celebration of Mass should be perpetual, in the aforementioned church, so that, although I do not command it, I make this desire known to him, so that he may, if he wishes, seek the perpetuity of such Masses." Then he instituted his heirs, his other great-nephews, brothers of the Priest John, as his heirs, in equal shares. Indeed, it is established by the expertise of a surveyor that the portion of land assigned to the priest John yields an annual income of 672 scudi, and is much lower than the portions that fell to the other brothers. Furthermore, it is certain that these great-nephews of Gregory Chiachiararelli were closer to him, and therefore were also his legitimate heirs.

[*Latin ed. p. 357*]

PRAENESTINA 357. In this situation, the priest John, to whom that benefice with the obligation of saying Mass had been assigned, petitioned the Apostolic See to reduce the number of Masses to one hundred and fifty per year, and perpetually, citing the following reasons: that if the testator had died intestate, the petitioner would have inherited a portion of the inheritance, a larger legacy, and would have been entirely free, as would the other brothers; that the daily obligation of saying Mass in a rural church is entirely burdensome; and that the petitioner, who resides in Praeneste, would be compelled to fulfill this obligation through another person. The auxiliary bishop confirms and commends these requests, also because it does not appear from the words of the will that this legacy of Masses was intended for the benefit of the people, but only for a special devotion towards that most sacred Image.

DISCUSSION: THE PETITION APPEARS TO BE JUSTIFIABLE. From the letter of the Ordinary, as well as from the reasons presented in the petition, it is clear that the granting of this concession is motivated by the best of equitable considerations. Indeed, the assignment of this legacy can be considered onerous and burdensome, for by it, the priest John has entirely lost the name of heir and the portion of the inheritance that he would otherwise, with all probability, have obtained along with the other brothers; he has obtained a portion of the goods that is inferior to the portions of the other brothers; and it is not a free portion, but one burdened with such an obligation that the legacy appears to be exhausted. Furthermore, since the Oratory to which the priest is assigned is located about a thousand paces from the town, it is not so easily, nor without due compensation, that a priest, either residing there or traveling there to say Mass, can be found. Moreover, from the expressed desire of the testator, these goods should

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still remain attached to the legacy until the death of the legatee; thus, the legatee, who obtains hardly any benefit from the legacy during his life, will not be able to freely dispose of it after his death without causing offense. However, it is a just law that legatees should not be burdened beyond what they are burdened with, according to *Institutiones* § 1 *de legatis*.

[*Latin ed. p. 358*]

358 PRAENESTINA. Therefore, equity seems to suggest that a reduction of the burden should be made. Furthermore, the principle of prudence applies: for the priest promises that he will take care that the pious bequest of vestments, altar cloths, and other sacred furnishings be preserved perpetually, if it is reduced to the requested, appropriate amount. Otherwise, after his death, he could quite possibly, and even without causing great offense to anyone, dispose of the same bequest, or at least a large part of it, or even entirely, for other, profane uses. Therefore, if the request is denied under the pretext of preserving a greater good, a shorter and less substantial benefit may be obtained. THE REQUEST APPEARS TO BE REJECTABLE. However, the explicitly stated will of the testator, which, if it is to be scrupulously observed in all respects, establishes the law according to the judgment of both jurisdictions, is most clearly verified in the dispositions concerning pious bequests, which are directed towards the benefit of souls. Moreover, although the bequest does not involve a notable benefit, it nevertheless adequately compensates for the burdens; for it yields 672 *libellae*. Finally, the argument based on the quality of the heir is of little value; for John is not a necessary, but only a legitimate heir of Gregory; and therefore, he could have been safely overlooked; and even if he were to obtain a pre-legacy, he would not have a legitimate reason to claim his free inheritance, as do the other brothers. Considering these points, the question arises: what should be the answer to the prayers? RESOLUTION. The Sacred Council, having considered the matter, decided on July 21, 1888, to respond: Regarding the request for a reduction, it is granted, provided that the bequest, thus reduced, be permanently established, in a manner and form to be determined by the Most Reverend Archbishop, with the agreement of the Most Holy.

[*Latin ed. p. 359*]

359 LÜNEN. SARZANEN. DOUBTS CONCERNING THE ORDINATION OF RELIGIOUS MEN. August 18, 1888. Sess. 23, cap. 8, De reform. SUMMARY OF THE CASE. The Bishop of Lünen, Sarzanen, presented a petition to the Sacred Congregation of the Council, the text of which was as follows: "A certain Religious man, lacking a particular privilege, who can be ordained by any Catholic Bishop, presented to an external Bishop attestations from the Ordinary, within whose diocese the religious community is located, in which it is declared that the Ordinary has not

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held the ordination outside the prescribed times. He asks: 'I. Whether, according to the Constitution of Benedict XIV, dated February 27, 1746, an external Bishop can, outside the times established by canon law, ordain a Religious man lacking the aforementioned privilege. 'II. Assuming an affirmative answer: Whether the attestation of the diocesan Ordinary is sufficient for the case; or whether an attestation is required, which declares that the Bishop of the place where the Religious man resides has not held the ordination at the prescribed times. 'III. And, assuming a negative answer to the first question: Can a contrary custom derogate from that Constitution of Benedict?'"

SYNOPTIC DISCUSSION. The Council of Trent, Sess. 23, cap. 8, De reform, decreed that "ordinations of the sacred orders must be celebrated at the times established by law." Furthermore, "each one must be ordained by his own Bishop." However, "if anyone requests to be promoted by another, it must not be permitted to him, even if under the pretext of any general or special rescript or privilege, except that his probity and morals are attested by his own Ordinary."

Therefore, the Council of Trent, in this passage, primarily commands that the ordination be: 1. Held at the prescribed times. 2. Performed by the proper Bishop. And this law also applies to Religious men.

[*Latin ed. p. 360*]

360 LÜNEN. SARZANEN. It is beyond dispute that those who are to be admitted [to the religious life] must do so within the prescribed time, and are to be promoted by their own Bishop. The Ordinary Bishop, however, determines, according to the ancient discipline and accepted canons of Benedict XIV, who among the Regular clergy is to be admitted, as is stated in the decree issued by the Sacred Congregation on March 15, 1596, and already sanctioned by Clement VIII, which reads as follows: "The Sacred Congregation decided that the superiors of the Regular clergy may grant dismissal letters to a subject of their own order, who, possessing the required qualifications, wishes to enter a religious order, to the diocesan Bishop, namely, that of the monastery, within whose jurisdiction the Regular cleric is located; and if the diocesan Bishop is absent or will not be administering ordinations, to any other Bishop, provided that the Regular cleric is examined by the Bishop who is to confer the ordinations, regarding his doctrine, and provided that the superiors of the Regular clergy do not withhold the granting of the dismissal letters during the time when the diocesan Bishop is absent or will not be administering ordinations. However, when dismissal letters are granted by the superiors of the Regular clergy in the absence of the diocesan Bishop, it is certainly necessary that the reason for the diocesan Bishop's absence or the lack of ordinations be stated in them." Furthermore, there are Regular clergy who enjoy the privilege of receiving ordinations from any prelate, provided he is in commu-

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nion with the Apostolic See, both within and outside the prescribed times. These two privileges are not so closely connected that they cannot stand separately. Indeed, the Bishop, in his argument, seems to clearly acknowledge this distinction. He says: "A Regular cleric, who lacks the privilege of being ordained by any Catholic prelate," requests that he be ordained by an external Bishop: upon presentation of a certificate from his own Bishop, declaring that he will not be receiving ordinations at that time, the primary question is then raised: whether this Bishop can administer the sacrament of ordination to this Regular cleric, outside the prescribed time. Indeed, it is assumed in this case that this Regular cleric lacks the privilege of receiving ordination from any Catholic prelate;

[*Latin ed. p. 361*]

LÜNEN. SARZANA. 361 The Prelate, even if, by some privilege, he were to be deprived of the power of conferring ordinations outside the usual times, there would be no difficulty; for such a religious is necessarily obliged to seek the approval of his own Bishop, or to appeal to the Holy See. But, on the contrary, if we suppose that this same religious, possessing the privilege of conferring ordinations outside the usual times, while another lacks it, then a certain difficulty arises. For, if the diocesan Bishop refuses to grant ordinations outside the usual times, the religious who cannot leave the diocese would be frustrated in the exercise of his privilege of conferring ordinations outside the usual times. Hence, the question proposed. Regarding which, one might first consider whether a Bishop, who has religious families in his diocese enjoying the privilege of conferring ordinations outside the usual times, is obliged to acquiesce in their requests. Indeed, as Saint Benedict XIV states in the cited constitution *Impositi nobis*, religious, preferring and extolling their indulgences, have sometimes vexed Bishops unduly and excessively in seeking to have ordinations conferred. But, given that the diocesan Bishop does not consent to the legitimate requests of the religious, for this or that reason, and declares that he will not have ordinations conferred outside the usual times, then a subordinate question arises: namely, whether the religious can, for the legitimate exercise of his privilege, appeal to a Bishop from outside the diocese; and whether the mere testimony of his own Bishop that ordinations outside the usual times will not be permitted is sufficient to legitimize the extraordinary ordination of another Bishop. But let the Consultant be heard. OPINION OF THE CONSULTANT. Regarding the first question raised by the Most Reverend and Reverend Bishop of Sarzana, I believe it is necessary, above all, to distinguish in the alleged Benedictine Constitution between the privilege granted by the Apostolic See to certain religious orders of receiving ordinations from any Catholic prelate, and another privilege of receiving ordinations outside the usual times, established by the common law of the Church. Hence, in order

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for the proposed question to present a certain difficulty, I believe it must be assumed that the religious in question, while indeed lacking the first privilege, does possess the second.

[*Latin ed. p. 362*]

362 LÜNEN. SARZANEN. Indeed, that Benedict XIV accurately distinguished these two things, is evident from the fact that, after having defined all that pertains to legitimate possession and the canonical use of the prior privilege, namely that it is granted after the Council of Trent, 2° so that it may be held directly, not through communication, he proceeds as follows: "Furthermore, we wish and decree that, should regular clerics, having received a dismissal, be directly under another Ordinary, because the diocesan Bishop resides outside the diocese, or has not received ordination, such dismissals shall have no validity or force, unless they are accompanied by an authentic attestation from the Vicar General, or the chancellor or secretary of the same diocesan Bishop, from which it is clear that the Bishop is absent from the diocese, or has not received ordination, according to the legitimate time established by ecclesiastical laws for this purpose. This must be expressly declared in order to exclude the arrogance of some, who, while enjoying the privilege of receiving orders outside the established times, have considered the Bishops to be so subject to their will, that if, WHENEVER IT PLEASED THEM, to promote to orders, they would not immediately fulfill the wishes of those designated on the very day appointed, it could be said that the ordination was not received from the Bishop, and therefore another Bishop would have to be sought to administer the orders." Hence, the Pontiff decrees concerning those who violate this law: "But if any Ordinary presumptuously promotes a regular man in his Diocese to orders, relying solely on the dismissal letter of his superior, without the aforementioned attestation, in proper form, proving it, we decree and declare that such an action itself incurs the canonical penalties established against those who have ordained a subject who has been legitimately dismissed from another jurisdiction." These words of the Pontiff, it is evident, pertain to all regular clerics who have the privilege of receiving orders outside the times established by common Church law, although they are required to receive them from their own Ordinary, namely, the Bishop of the Diocese in which the house is located.

[*Latin ed. p. 363*]

LÜNEN. SARZANEN. 363 regularis, in which dwells he who ought to receive the habit; therefore, to the first question, I answer: Affirmative, provided that the regular canon, as in this case, although lacking the first of the two privileges mentioned, enjoys the second. It must be noted, with regard to the second question, that for the legitimate exercise of the second privilege, namely, to receive the habit outside of the established times, it

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is required that the Pontiff be consulted, so that due reverence may be maintained for the dignity of the Bishops, and so that the arrogance of some may be excluded. See the words cited above. From this, it is also clear what must be answered to the second question; namely: It suffices that it be established, with the aforementioned caution, that the local Bishop does not have ordinations outside of the established times, or at least not during the next legitimate time; it is by no means necessary that it be established that the local Bishop does not have ordinations even during the established times, therefore, in the second question, I answer: affirmative to the first part, negative to the second part. For it is evident that, in this second case, the regular canon could never exercise his privilege, which is entirely contrary to it. For, as I have already pointed out, what is required by the Pontiff is that the regulars not request the habit at any time, especially if, shortly after their request, the time for the general ordinations approaches. Therefore, with this condition properly observed, the regulars will be able to exercise their privilege, just as they are exempt from the law of intervals if they enjoy this privilege. Therefore, it suffices that it be established that the Bishop does not have general ordinations during the next time. Finally, with regard to the third question, as it pertains to the case proposed, I answer: It is provided for in the first. No custom is necessary where the aforementioned privilege is clearly asserted within the established limits in the Benedictine Constitution itself. If, however, a custom had been introduced that did not respect those limits, I believe it would not be...

[*Latin ed. p. 364*]

364 LÜNEN. SARZÁNEN. It is the custom, but a corrupt one, which would break the nerve of ecclesiastical discipline, chapter. Since between the customs and chapter. Custom, h. t. in 6. Therefore, it will never become legitimate. It would be superfluous to engage in a general and abstract discussion here as to when and within what limits a contrary custom can derogate from the law. On this matter, see the interpreters and the Doctors ad tit. 4, lib. I, Decretalium. With these things forewarned, the doubts, carefully prepared by the Bishop, were presented: I. Whether, according to the Constitution of Benedict XIV, of February 27, 1746, an external Bishop can, outside the times established by the canons, ordain a religious lacking the aforementioned privilege, in this case. And to this, an affirmative answer. II. Whether the attestation of the diocesan Ordinary is sufficient in this case; or whether an attestation is required, which declares that the Bishop of the place where the religious resides, will not hold the ordination at the established times. And to this, a negative answer concerning the first. III. Whether the contrary custom can derogate from the aforementioned Constitution of Benedict in this case. RESOLUTION. After due deliberation, the Holy Congregation decided on August 18, 1888, to respond as follows: To I. Affirmative. To II. An attestation is required that the proper Bishop will

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not hold the ordination at the next legitimate time. To III. Negative. FROM WHICH IT IS UNDERSTOOD: I. That a religious, lacking the privilege, can be promoted to the sacred orders by any Catholic Bishop, but provided that he receives another privilege of receiving the sacred orders outside the established times, as established by the common law of the Church, he can be ordained by an external Bishop. II. However, it is required that the proper Bishop, or the Bishop in whose diocese the religious family in which the religious resides is located, attest that he will not hold the ordination at the next legitimate time.

[*Latin ed. p. 365*]

LÜNEN. SARZANEN. 365 I I I. Concerning this matter, it was not sufficient for the Bishop himself to generally testify that he did not hold the sacred ordination outside of the established times. I V. A contrary custom is entirely inadmissible, but is to be considered as a corruption that would undermine the very foundation of ecclesiastical discipline.

VENTIMILIEN. TRANSLATION OF THE CHAPLAIN'S REPORT AND BURDENS.

On August 18, 1888. Through a summary of prayers.

COMPENDIUM OF FACTS.

The priest Francis and Roch Rossi, the former being the rector, the latter the patron of the chapel of Saint Rose, located in the place of Triora, in the Diocese of Ventimiglia, having presented a detailed report to the Holy See, stated the following: Recently, due to a severe earthquake, the small chapel of Saint Rose, in which many of the Masses of the aforementioned chapel are celebrated, has suffered considerable damage, to the extent that it is deemed unsuitable for divine services; and significant expenses are required to restore it to its former condition, which the patrons are unable to bear. The aforementioned chapel has been subject to various burdens since ancient times, stemming from the owners of the houses by which it is surrounded, and these cannot be avoided. The chaplain of said chapel is burdened, in addition to the Masses, with financial obligations, both for maintenance and for alms, which must be paid annually to the poor of several places. All the Masses celebrated, as well as the expenses of maintenance and alms, have been fully met until the year 1882. Concerning this matter, the patrons implore the granting of absolution regarding any omission of the past, and the possibility of alienating said chapel for domestic use; of celebrating Masses in the parish church, as has been done for many years, with the consent of the Ordinary; and of converting the distributions for the poor, the funds of the fabric, and the fruits of the money from the alienation of the chapel, to restore the income of the chapel,

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diminished by the price of redemption paid to the Demanio.

[*Latin ed. p. 366*]

366 VENTIMILIEN. At the foot of the petition, the Ordinary added this testimony, which is highly favorable to the prayers: "Since it is known to Us that the prayers are true, and especially concerning the grave damage to the chapel, as mentioned in the prayers, caused by the earthquake, and concerning the expenses for its restoration, as well as the small benefit, not to mention the uselessness, of the annual distribution to the poor; and since it seems fitting, whether for the restoration of pious causes or for the celebration of Masses in the parish church, We commend the prayers of the pious to the Apostolic benevolence, so that, if the Supreme Seat deems it fitting, grace may be granted."

Regarding the first point of the prayers, namely the absolution from the past, this clearly refers to 1. the distribution of alms, which was suspended from the year 1882, and 2. the contribution for the building, which was also suspended from the year 1881, although the chapel itself collapsed only in February of the year 1887.

Regarding the translation of the celebration of Masses, which the Ordinary carried out, it is unclear whether this was done with the permission of the Holy See, or rather, solely by the Bishop's decree. If the latter is the case, then the question arises as to whether the Bishop was able to do this, which some deny, but others, given a just cause and with the consent of the patron or heir, admit. Among these is Ferraris, volume 147, *De Luca ad conc. Tridentinum*, discussion 21; D'Annibale, volume 2, § 379.

Regarding the translation of the chapel from the building that is now collapsing and cannot be restored, to another church, this is in accordance with the provisions of session 22, chapter 7, *De reformis*, where Trent strongly recommends the preservation and restoration of churches "so that those which are dedicated to the sacred ministry may not become obsolete through the ravages of time, and may not disappear from the memory of men." To this end, the Sacred Congregation has often opposed the demolition of churches, as in Ravenna, July 29, 1774, and in Iesi, August 2, 1780. However, the aforementioned words of the Council of Trent are not always...

[*Latin ed. p. 367*]

VENTIMILIEN. 367. Hoc videtur esse praeceptum absolutum; siquidem Patres Tridentini, postquam Episcopis commendaverunt restaurationem ecclesiarum, ut ea perfici possint, haec mandant: « Quod si nimia egestate omnes patroni, parochiani, etc., laborant, ecclesiae et beneficia ad matrices seu viciniores ecclesias transferantur, cum facultate, ut parochiales, ita etiam alias ecclesias dirutas in profanos usus, non sordidos, convertendi, erecta tamen ibi cruce. » Unde Sacra Congregatio, non semel, demoli-

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tionem ecclesiarum aut conversionem ad profanos usus indulsit, hac illave iusta causa existente, maxime si favorabile Episcopi votum accesserit, sicut patet in Terracuten, 14 Aprilis 1764, et recentius, aliis omissis, in Bituntina, 22 Decembris 1866. Ex quibus eruitur non solum ruinam aedium et impossibilitatem restaurationis esse causam legitimam demolitionem; sed etiam periculum irreverentiae et profanationis, necessitas publicae sternendae viae, aliaque similia, praebere titulum sufficientem ad hoc. Demum, quoad postremum punctum, quo postulatur, ut suspensa interim distributione eleemosynarum, et eo proventu cumulato cum alio fabricae et utensilibus assignato, restituatur sors redemptionis per tributum, svincolo, imminuta, remissum fuit prudentiae E. E. P. P. Animadversum quoque fuit quod si redintegranda sit sors, potius quam missarum celebrationem imminuere, utilius forte videri posset intercipere eleemosynas, quae « modicae utilitatis » imo propemodum inutiles ab Ordinario appellantur. Quibus praemissis, quaesitum est quid esset precibus respondendum: RESOLUTIO: Sacra C. Concilii, re cognita, sub die 18 Augusti 1888 censuit respondere: Pro gratia absolutionis quoad praeteritum et translationis Cappellaniae cum iuribus et oneribus suis ad Ecclesiam parochialem, cum facultate alienandi cappellam dirutam, et invertendi pretium in augmentum dotis.

[*Latin ed. p. 368*]

368 FROM THE HOLY CONGREGATION OF THE INDEX DECREE. Friday, December 14, 1888. The Holy Congregation of Eminent and Reverend Cardinals of the Holy Roman Church, appointed by the Most Holy Pope Leo XIII and the Holy Apostolic See to oversee the Index of books of false doctrine, and their condemnation, suppression, expurgation, and permission throughout the Christian Republic, having met in the Apostolic Palace at the Vatican on December 14, 1888, condemned and condemns, prohibits and prohibits, or orders that the following works be referred to the Index of Prohibited Books:

* *Trattato di diritto internazionale* by Augusto Pierantoni, ordinary professor at the Royal University of Rome. Volume I. Prolegomena. History of Antiquity up to the year 1400. Rome, Forzaui & C., printers of the Senate, 1881.

* Juan Montalvo. *El Espectador*. Volume third, March 15, 1888. Paris, Franco-Hispanic-American Bookstore. J. Y. Ferrer, 1888.

* *La question sociale — Et les Partis politiques — Solutions scientifiques — Collectivisme et Progressisme*, by Er. Horion, Doctor of Sciences, Medicine, Surgery, etc., and Special Doctor in Surgical Sciences. — Decree of the Sacred Congregation of the Holy Office, April 12, 1888.

* The Abbot Roca, honorary canon, former student of the School of Advanced Studies of the Carmelites. — *Le Christ, le Pape et la Démocratie*. Paris, Garnier Frères, publishers, 1884. Decree of the Sacred Congregation of the Holy Office, April 19, 1888.

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* *La crise fatale et la salut de l'Europe*. — Critical study on the missions of Saint-Yves. Paris, etc., 1885. Same decree.

* *La fin de l'ancien monde, les nouveaux cieux et la nouvelle terre*. Paris, Jule Levy, bookseller and publisher, 1886. Same decree.

Given in Rome, December 17, 1888.

PLACIDUS MARIA Cardinal SCHIAFFINO, Prefect.

HIERONYMUS Pius SACCHERI, Ordinary of the Holy Congregation of the Index, from the Secretariate.

[*Latin ed. p. 369*]

369 APPENDIX I. Herein are recounted several Decrees of the Holy Congregation of Rites. TEMPLEN. The Master of Sacred Ceremonies and Director of the Calendar, for the proper performance and celebration of the sacred office in the Cathedral Church of Templen, humbly requested a resolution from the Holy Congregation of Rites concerning the following doubts:

DOUBT I. Since on the island of Sardinia, the Feast of Saint Maur, Abbot, of simple rite, perpetually coincides with the Feast of Saint Ephysius, Martyr, which throughout the entire island is celebrated under the rite of double first class, it is asked whether the Feast of Saint Maur, Abbot, ought to be transferred to another day?

DOUBT II. Whether the Feast of Saint Antiochus, Martyr, of double minor rite, ought to be restored on November 13th in Sardinia, with the Feast of Saint Stanislaus Kostka, Confessor, of the same rite, being transferred; or rather, whether the Decree of February 3, 1847, by which it was established that on that day the Office of the aforementioned Saint Stanislaus should be celebrated in Italia and the adjacent islands, with the transfer of any other Feast of equal rite, should be observed?

DOUBT III. Whether it is permissible, even though it contradicts custom, but with the consent of the Bishop, for the laity to sit during the solemn Masses, while the Gloria and Creed are sung, if the celebrant and ministers stand, or if they also sit, as is done on greater solemnities?

DOUBT IV. Whether it is permissible, with the consent of the Bishop, even without the approval of the chapter statutes and against the will of the canons, for the laity to sit in the choir stalls along with the Beneficiaries and Mansionaries during the divine Offices, and to recite or sing the divine praises along with them?

DOUBT V. Whether the canons can licitly receive the thurible and pax on feast days, with their heads covered by a biretta?

DOUBT VI. Whether it is permissible for the canons and Mansionaries to be present at the solemn Mass in the choir, which is behind the main altar, with their heads covered by a biretta?

DOUBT VII. Whether it is permissible for Bishops on Sundays of Advent

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and Lent, except for Gaudete and Laetare, and also when the Feast of the Immaculate Conception of the Blessed Virgin Mary occurs, if the Office of the Sunday is celebrated, to wear the precious mitre?

[*Latin ed. p. 370*]

370 QUESTIONS. Question I. Whether, during the Paschal time, processions should traverse roads, places, and areas accessible to all? Question XIV. Whether it is permissible for religious images, whether painted or sculpted, and also for those images called "Mansiones," for Clerics, and for those being initiated, to be displayed with singular veneration during sacred Functions, adorned with the *rocchetto* or *superpelliceo*, following a specific form? Is the *rocchetto* preferred? Question IX. Whether, during the celebration of Vespers in a solemn manner, a Canon of the same Congregation is permitted to bring forth, under the *pluviale* and *stola*, a pallium from one of the Apostolic Sees, according to the custom, as requested by the Masters of Ceremonies? (Regarding this, the following is the response of the undersigned Secretary.) Question X. In the Exposition in the form of the Forty Hours, is it permissible to carefully review the proposed questions each evening before the Blessed Sacrament, and to have them written down as approved? Question I. Negative. Is it permissible to give the Sacrament to the people, and to give the benediction to the people? Question XL. Is it permissible, on the same day and in the same Church, to expose the Blessed Sacrament multiple times to bless the people? Question XII. Whether Canons and Beneficiaries of the Cathedral Church, especially during the Forty Hours Exposition, are obliged to attend the choir, both for the performance of the Divine Office and for the solemn Masses and Vespers, and whether they may be compelled by the Bishop to wear the *pileolus*, even in cases where its use is otherwise prohibited, in order to pray before the Blessed Sacrament, especially when other Priests are present who could dedicate themselves to such prayer during the Divine Office, or at least, whether this is fitting? Question XLII. Is it permissible to bring the *Viaticum* without any pomp, and for a private reason, in order to administer it to the sick who are very far from the Parish Church, and who must travel? And are the prescriptions of the Ritual to be followed?

Decree of February 3, 1847. And on the same day and in the same Church:

I. The rubrics of the Ceremonial Bishops are to be observed.

II. They shall sit in distinct seats.

III. Negative, according to the decrees.

IV. Affirmative, except for those Masses, according to the decrees and approved authors, where the use of the *pileolus* is also prohibited.

V. Negative.

VI. The celebrant should consult the approved authors.

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VII. Negative.

VIII. Affirmative.

IX. Affirmative regarding the license of the Bishop.

X. Negative regarding the first part, affirmative regarding the second.

XI. Affirmative, and the prescriptions of the Ritual are to be followed.

[*Latin ed. p. 371*]

In the Canadian region, the Sacred Congregation of Rites requested a resolution to the following doubts:

Doubt I. Whether the collection for the Bishop should be taken both on the day of his consecration and on the day of his election in CARCASSONE.

Doubt II. Whether the Bishop can be declared elected by the Sacred Congregation of Rites on the day when, on the 2nd of September, 1741, at the eighth hour, the aforementioned doubts were presented. Letters in the form of a brief were sent, stating: "Should this be done throughout the entire diocese, when the predecessor held the office for eight years, or rather, on the day when he was named Coadjutor in the Consistory?" The answer was affirmative. Therefore, the current calendar of the Carcassonne diocese, having received letters from the Sacred Congregation, and after hearing the vote of another of the Masters of the Sacred Ceremonies, humbly requested the Sacred Congregation to resolve the following doubts:

Doubt I. Should the use of this hour be abolished until these doubts are resolved?

Doubt II. Whether, in the calendar of the secular clergy of the City and Diocese of Carcassonne, the following formula, "Dedication of the Holy Archangel, Patron of the Cathedral Church, Double of the First Class, to be observed throughout the entire diocese," can be included?

And thus, the Sacred Congregation of Rites, after considering the report of the undersigned Secretary, decided to respond affirmatively to both doubts.

And thus, it was written and ordered to be observed. January 30, 1878.

LINGONENSIS.

The Most Reverend William Bouange, Bishop of Langres, for the diocese entrusted to him, humbly requested:

MARIANOPOLITANA.

That the second vespers of the feasts, whose solemnity is observed at home, may be solemnly sung in the choir, and that a decree be issued to that effect.

Bissinianen. May 23, 1846.

To the XIVth. Negative, and the decrees are to be observed.

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And thus, it was written and ordered to be observed. January 12, 1878.

[*Latin ed. p. 372*]

372 APPENDIX I. the next meeting shall be held. The Sacred Congregation of Rites, having heard the report of the undersigned Secretary, and the opinion of another Master of the Sacred Ceremonies, decided to respond as follows: Nothing prevents this, provided that the Vespers of the Office are not omitted, where there is an obligation. January 30, 1878. IACENA. The Most Reverend Lord Gerlandus Genuardi, Bishop of Jaca, humbly requested the Sacred Congregation of Rites to issue a suitable declaration regarding certain customs that he found in the diocese entrusted to him, as to whether they could be tolerated. This was therefore satisfied by a Decree of July 28, 1876, in which the requests made by the Bishop were duly addressed. However, since the Rectors or Archpriests of the places commonly called Giarre, Piedimonte, Etnea, and Riposto did not benefit from this Decree, they appealed to the same Sacred Congregation for its revocation. Therefore, after presenting reasons for maintaining the aforementioned customs, they proposed the following questions to be defined: Question I. Can Rectors or Archpriests of the Diocese of Jaca, who have been separated from the Diocese of Messina, use the *mantelletto violaceo* and the ring adorned with gems in ecclesiastical functions? And can they use four ministers, dressed in dalmatics or tunics, in the solemn Mass? Question II. Can it be tolerated in the same Diocese that, in almost every solemn celebration, a priest assisting uses a *pluviale*? Question III. Can it be tolerated that the people and the clergy sit while the Most Holy Sacrament remains exposed? The aforementioned Sacred Congregation, after mature consideration of these questions, having heard the report of the undersigned Secretary, responded as follows: To I. Negatively, to the first part; it is deferred, and the opinion of the Master of Ceremonies shall be heard regarding the second part. To II. It is decided. To III. It is decided, and with regard to the clergy, the Ceremonial of Bishops must be observed in ecclesiastical functions. And thus it responded, and it is ordered to be observed. January 30, 1878. SAGI EN. The Most Reverend Lord Carolus Fridericus Rousselet, Bishop of SÃ©ez, informed the Sacred Congregation of Rites that there exists in the city of SÃ©ez a public church or chapel, annexed to a minor seminary, and consecrated under the title of the Blessed Virgin Mary Immaculate on May 7, 1872. In this church, which is served by priests attached to the minor seminary, daily...

[*Latin ed. p. 373*]

More Masses are celebrated (indeed, private Masses), and on each Sunday, Mass and Vespers are sung, except during the school week, in the months of August and September, during which time at least one private Mass is celebrated daily, both on Sundays and on other days. From this,

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the aforementioned Sacred Congregation humbly inquired, "Whether the feast of the Immaculate Conception, on the eighth of December, can and ought to be celebrated by the clergy of the aforementioned Seminary as a titular feast, that is, under the rite of the first class with the octave and other privileges?" Furthermore, the same Sacred Congregation, having heard another from the Masters of the Apostolic Ceremonies, in response to the report of the undersigned Secretary, definitively decided in the affirmative. And thus, it decreed on March 30, 1878, GADITAN. Ferdinand Fernandez y Coin, Rector of the Parish Church of Saint Anthony in Gadiz, Diocese of Hispania, Gaspar Rocafull, Prefect, and Joseph Maria de Falla, Secretary of the canonically erected Brotherhood of the Blessed Virgin Mary of Mount Carmel, humbly requested a solution to the following doubts:

Doubt I: Whether the privilege granted in the Bull of Clement VII, in the year 1530 (which begins "From the Clementine Apostolic See"), to the members of the same Brotherhood, namely, to celebrate the sacred Mass Sacrifice privately in houses, either by themselves or through others, still holds, or whether it ever held, or whether there has been any revocation or reformation of that same privilege by the Apostolic See?

Doubt II: Whether, at least, the aforementioned members can, by virtue of the same privilege or the Holy Bull of the Holy Cross, fulfill the precept of hearing Mass, in those houses which enjoy this privilege by a special concession of the Holy See?

The same Sacred Congregation, in response to the report of the undersigned Secretary, having considered the proposed doubts properly, decided to respond as follows: Objections notwithstanding. And thus, it responded on March 30, 1878. SAINT-CLAUDE. The Prefect of the sacred ceremonies in the Cathedral Church of Saint-Claude, having presented the following to the Sacred Congregation: "According to the order of the Diocese of Saint-Claude, the solemnity of the same Saint Patron of the City and of the entire Diocese, whose feast is celebrated on June 6th, is transferred to the following Sunday, and is observed in each parish itself. However, every place in this Diocese has its own Patron, whose solemnity is also transferred to the following Sunday from the day it falls."

[*Latin ed. p. 374*]

374 APPENDIX I. The Apostolic Indult granted on April 9, 1802, throughout the entire territory of the Republic of Gallia, is transferred. Furthermore, from several responses of the Sacred Congregation of Rites, it appears that the solemnity of the Patron of the Diocese should not be observed, since no obligation lies upon the Faithful to commemorate the feast of such a Patron. However, the custom observed in several dioceses of the same region is otherwise. Hence, the Orator humbly proposed these two questions to the same Sacred Congregation for appropriate resolution, namely: Question I. Whether, in places where the solemnity of

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the local Patron is celebrated, the solemnity of the Patron of the Diocese must also be observed on the following Sunday? Question II. And, if not, whether such practice may be retained at the discretion of the Bishop? The Sacred Congregation of Rites, after duly considering these questions in accordance with the report of the undersigned Secretary, responded as follows: To I and II. Negatively, according to the procedures of the Decrees, especially in the matter of November 12, 1831, number 41. And thus it responded on March 30, 1878, in ALMERIA. The present Master of Ceremonies of the Cathedral Church of Almeria presented to the Sacred Congregation of Rites, from the ancient custom of the aforementioned Church, which also prevails in some other Cathedrals of Hispaniae, that the readings to be chanted in the morning are not designated by the first Master of Ceremonies, but by another designated Master of the Choir, and humbly inquired whether the aforementioned custom should be maintained or not. And the Sacred Congregation of Rites, after hearing the report of the undersigned Secretary, considered that the following should be responded: The aforementioned custom may be maintained. And thus it responded on March 30, 1878, in ALBA REGALENSIS. The Most Reverend Lord John Pauer, Bishop of Olympia and Capitular Vicar of Alba Regalensis, in that see being vacant, humbly proposed the following to the Sacred Congregation of Rites for appropriate declaration, namely: The Sacred Congregation of Rites, on June 19, 1700, in a case concerning the question: whether, in rural parish churches in which, throughout the year, only one priest usually celebrates and without singing, a Mass for the Dead may be said on the anniversary of the deceased's death, when the anniversary occurs on a day of double minor feast, or when the third, seventh, or thirtieth day falls on a day of double minor feast? responded: Regarding Masses for the anniversary of the deceased's death, affirmatively; in the other cases, negatively.

[*Latin ed. p. 375*]

And let the general decree issued on August 5, 1662, be observed. However, since a doubt has arisen as to whether, under the term "parochial rural churches," only the matrix or mother churches of rural parishes are to be understood, or also any other filial churches and chapels existing within the territory of rural parishes, in which, for the most part, only one priest celebrates throughout the year, sometimes different from the parish priest, and in which anniversary Masses are held according to the dispositions left by testators; therefore, the Reverend inquired humbly: Whether, according to the aforementioned decree, by which, namely, when anniversaries left by the dispositions of testators fall on a double minor feast day, a Mass for the repose of the soul can be said, can this permission be extended to the aforementioned filial churches and chapels existing within the territory of rural churches? Furthermore, the same Sacred Congregation, having

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heard the opinion of another of the Masters of the Sacred Rites, and with reference to the report of the undersigned Secretary, decided to declare: Affirmative, insofar as the anniversaries were instituted by the founders in the churches in question. And thus it declared. On March 30, 1878, in PALERMO. The Reverend Lord Michael Angelo Celesia, Archbishop of Palermo, submitted the following questions to the Sacred Congregation of Rites for resolution; namely: Question I. Whether, in a church of nuns, in whose monastery a community of another order also resides, the Office and all Masses may be recited or celebrated with the double rite of the first class, including the octave, on the occasion of the feast of the Founder of the hosted community? Question II. Whether, in the affirmative case, if the proper day is impeded, the cloistered guests may transfer the solemnity of their Founder to the octave day, or celebrate it in the church of the monastery, where they reside, even if the nuns of the monastery belong to a different order and celebrate another feast, and even if another feast day of the same saint is observed in the diocese? The same Sacred Congregation, having heard the opinion of another of the Masters of the Sacred Rites, decided to respond with reference to the report of the undersigned Secretary: To I. Negatively, unless a privilege exists. To II. Affirmative, as far as the transfer is concerned, according to the rubrics. And thus it responded, and it was ordered to be observed. On March 30, 1878, in NETEN. To resolve the controversy between the Chapter of the mother church of Saint George the Martyr.

[*Latin ed. p. 376*]

376 APPENDIX I. Concerning the Feast of Saint Peter in the city of Mothuca, in the Diocese of Noto, regarding whether the principal patron of the city should be honored as Saint Cataldus, Bishop, or rather as Saint George, Martyr, as had been established by the Most Holy Pope Pius IX through a decree of the Sacred Congregation of Rites on April 30, 1874, the execution of which decree remained suspended by another provisional decree of the same Sacred Congregation on June 19, 1877, after which the parties in dispute had duly presented their claims; The Most Eminent and Reverend Lord Cardinal Miecislaus Ledochowski, Relator in this cause, at the Ordinary Assemblies of the Sacred Congregation of Rites held at the Vatican, proposed the following questions for discussion: Question I. Whether an appeal against the decree of April 30, 1874, could be admitted. Question II. And, if affirmative, whether Saint George, Martyr, or Saint Cataldus, Bishop, is the principal patron of the city of Mothuca; and therefore, whether the aforementioned decree of April 30, 1874, is or is not to be executed in this case? After hearing the Most Eminent and Reverend Fathers entrusted with the safeguarding of the Sacred Rites, both orally and in writing, and after considering the arguments presented from both sides, they judged it fitting to respond as follows: To I. This will be addressed

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in the second question. To II. Affirmative, in the first part; negative, in the second part; therefore, the aforementioned decree is to be executed and remains in force. April 17, 1878. Subsequently, the undersigned Secretary made a faithful report of all these matters to His Holiness Leo XIII, who approved and confirmed the rescript of the Sacred Congregation of Rites. May 2, of the same year. OF THE SOCIETY OF JESUS. The Reverend Father Vincent Licalzi, a priest of the Society of Jesus, appointed by his Superiors to prepare a Directory of Divine Office for the two provinces of Lyons and Toulouse of the same Society, humbly requested the solution of the following questions from the Sacred Congregation of Rites: Question I. What is to be thought of the increasingly common practice of celebrating Masses before the Most Holy Sacrament publicly exposed in churches, in which there are other altars, as well as of distributing Holy Communion in those same Masses, and outside of Masses, at the same altar? Question II. And, if such a practice is permissible, whether the bell may be rung during the Masses that are read at the same altar, especially on Sundays, because of the people who have gathered for that Mass?

[*Latin ed. p. 377*]

•ix i. Question III. When the Blessed Sacrament is exposed, is it permissible to employ a lay minister, without a surplice and cope, to assist at the Masses, especially when there is a lack of ministers who are clerics? Also, does the rule prescribed by the Clementine Instruction, which forbids anyone from going around the altar of exposition unless wearing a surplice, obligate the use of a surplice for every exposition?

Question IV. Also, is it permissible, during the exposition: 1°. to celebrate votive Masses dedicated to the Virgin Mary at other altars; 2°. to leave relics or images of the Saints on the altar of exposition, which are present there among the candles or near the wall for veneration; 3°. to place or at least affix candlesticks to the tabernacle, which are used for the exposition itself; 4°. to light candles before the images of Our Lord, either at the same altar or at another altar; 5°. to recite religious vows or to perform solemn consecrations?

Question V. Is it permissible to administer the Benediction with the Blessed Sacrament multiple times in the same church and on the same day, on the occasion of pious congregations or for devotional purposes? Also, is it permissible to interrupt the exposition of the Blessed Sacrament in order to administer the Benediction for reasons indicated?

Question VI. When the Ordinary permits the administration of the Benediction with the Blessed Sacrament on the occasion of a particular gathering, can the Benediction be given beforehand for the greater benefit of the gathering?

377 Question VII. It is not uncommon, due to greater solemnity, for the Blessed Sacrament to be exposed on feast days, and sometimes even during

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the course of one or two Masses. Can such a practice be tolerated?

Question VIII. It is the custom among some religious communities that the key to the tabernacle is not kept by the chaplain, but is kept within the cloister of the monastery, even when the chaplain's house is adjacent to the monastery. Can this custom be maintained?

Question IX. Is it permissible to maintain the practice, in some churches, where, due to the large gathering of people, the quantity of hosts is not sufficient for all to receive Holy Communion, that after a Mass has been celebrated, the distribution of Communion is immediately resumed from the consecrated hosts?

Question X. In some hospitals, there is a legitimately established chapel. Can a priest, while celebrating Mass there, distribute Communion to the sick who are present in the rooms around the chapel?

Question XI. 1°. Are priests obliged to inquire whether the Missal they use has been approved by the Bishop, or does this pertain to the Rector of the church? And, if so, can they use it? 2°. It often happens that priests visiting monasteries find Masses that are specifically granted to the nuns. Is it determined whether priests of both orders can use these Masses? And, if so, can all priests use them indiscriminately?

[*Latin ed. p. 378*]

378 APPENDIX I. It is to be read whether they are concerning the Saints; to be written against certain particular rubrics, for example, against the usage in the third [hour]. If they are concerning the Blessed? Doubtful. XII. It is asked: Is the use of the thurible to be employed in Masses, from the Concelebration over the Tabernacle, now at the consecration, until the Communion? Doubtful. XVIII. Can a part be considered obligatory, and can precious ornaments of the Tabernacle itself, previously placed before the corporal in the Mass, be dispensed with, only before the Offertory? Doubtful. XIII. Is the meaning of the rubric such that a later part of the altar, especially if it were a larger altar, can be used for the purpose, or is it rather to be understood as obliging to explain it from the beginning of the Mass, so that it can be used in the manner of an ambo? Doubtful. XIX. Is it permissible to use artificial candles made of metal in which a machine introduces a candle? And is it permissible that boys, dressed in cassocks, walk around the altar, scattering flowers and offering incense on that day, during the Benediction? Doubtful. XX. Can a private person ask for certain parts of the Mass, at least the Communion, to be celebrated for the convenience of the priest? Doubtful. XXI. In many churches on the feast of the Nativity of the Lord, Mass is celebrated in such a way that the priest is already at the point of Consecration at midnight, which occurs during the Vigil, which takes place on the Sunday after the Octave of Corpus Christi; secondly, is the use of the same instrument, commonly called a "tabor," also permissible on that occasion, even within the church? Doubtful. XVI.

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On the occasion of the First Communion of children, or for devotion to Saint Joseph in the month of March, may the altar be adorned with flowers, and may an organ also be played at that time? Or is this to be said negatively, if a large image of Saint Joseph is placed outside the altar? And in this last case, may the covering of the altar be left uncovered during the time of the Passion? Doubtful. XVII. Is it permissible to place several altars along the way, and to add the "Alleluia" to the bread from heaven during the Procession, which takes place on the Sunday after the Octave of Corpus Christi?

[*Latin ed. p. 379*]

i. 379 Regarding: Let the Decree in Aquen be given. September 2, 1741, to V; Regarding the third part: Consult approved authors; Regarding the fourth part: Regarding the first, Negative; Regarding the second, Affirmative; Regarding the fifth part: Affirmative, provided that whatever is irreverent is removed. To V. Regarding the first and second parts: According to the prudent judgment of the Ordinary, but avoiding excessive frequency, and provided that it is not a matter of the Forty Hours exposition. To VI. Affirmative, according to the concession of the Ordinary, and for a just cause. To VII. According to the prudent judgment of the Ordinary, with the rubrics prescribed for such expositions being observed; Regarding Masses, provision is made in the response to Question I. To VIII. Negative. To IX. Abuse must be prohibited. To X. Let the Decree in Florentina be given, December 19, 1829, to I. To XI. Regarding the first part: Consult approved authors; Regarding the second and third parts: Negative, unless a privilege is established. To XII. Let the Decree in Briocen be given, July 21, 1855, to XII. To XIII. Teach about the form of the altar. To XIV. Negative in all cases. To XV. Regarding the first part: Let the Decree in Volterra be given, September 23, 1820, and add: Does not the *Dix* remove that which is merely scenic from the singing of the *Gloria in excelsis*, but is it also the case that, after the singing of the Litany of the Saints, the ministers prepare the altar? Question XXIV. Is one bound to repeat the recitation of the Office; and if someone, through error, recites a part of the Office, or even the entire Office, approved only for a particular Church? Question XXV. Is it permissible to omit certain words of prayers, for example, the *Ave Maria*, so that in the singing of these prayers, some prerogatives of the Blessed Virgin Mary are suppressed, for example, *Mater Dei*? Question XXVI. Should the conclusion for the Prayer of Saint Ignatius of Loyola be: *through our Lord, or who lives and reigns, etc.*? Furthermore, the Sacred Congregation, after mature and diligent consideration of these questions, in relation to the report of the undersigned Secretary, decided to respond as follows: To I. Regarding the first part, it is not permitted without necessity, or a grave cause, or a special indulgence; Regarding the second part: Negative. To II. Consult the Decree in Mechlin, September 12, 1874, to XII. To III. Regarding

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the first part: Consult approved authors; Regarding the second part: Let the Decree in Padua be given, July 12, 1739. To IV. Regarding the first part: Let the Decree in Warsaw be given, May 7, 1746, to IX; Regarding the second.

[*Latin ed. p. 380*]

380 APPENDIX I. y. Alleluia; concerning the second part, affirmative, but only by way of concession. Concerning XVI. Concerning the first part: affirmative; concerning the second part: provision is made in the first; concerning the third part: consult approved authors. Concerning XVII. Consult the Decree of Pope Urban VIII, found in the Missal: and, regarding a particular example, consult approved authors. Concerning XVIII. They are to be observed in the case of the rubric. Concerning XIX. They may be tolerated. Concerning XX. Negative, and the rubrics are to be observed. Concerning XXI. The rubrics are to be observed, and contrary abuses are to be suppressed. Concerning XXII. Consult the Roman Pontifical concerning the Ordination of a Priest. Concerning XXIII. Attentive to custom, they may be tolerated. Concerning XXIV. Consult approved authors. Concerning XXV. Negative. Concerning XXVI. The conclusion is to be said. Through our Lord Jesus Christ. And thus he responded and wrote on May 11, 1878. GANDAVENSES. The Most Reverend Gentlemen, Architects of Ghent, Bethune and Verhaegen, while engaged in the construction of churches, humbly presented the following questions to the Sacred Congregation of Rites for a suitable declaration, namely: Question I. Whether the tabernacle in which the Most Holy Sacrament is reserved must necessarily be placed on the main altar of the church? Question II. And, if the answer is negative, what rules should be observed in the construction of the altar for the reservation of the Most Holy Sacrament? Question III. If in the main altar there is a perpetual exposition of the Most Holy Sacrament, as is the case in churches of the Religious Adorers, is it necessary that the tabernacle in which the Most Holy Eucharist is kept for the distribution of Holy Communion to the faithful be placed in another side altar? And the Sacred Congregation, referring the matter to the undersigned Secretary, considered it advisable to respond to these questions as follows: Concerning I. Negative. Concerning II. The rules to be observed in this case are determined by the prudent judgment of the Ordinary. Concerning III. Affirmative. And thus he responded. On May 18, 1878. VERAE CRUCIS. The Most Reverend Joseph Maria Mora, Bishop of Verae Crucis, humbly requested a declaration from the Sacred Congregation of Rites concerning the following question, namely: Whether all the feasts of the Patrons of the Nation and the City can be transferred to the nearest Sunday, or whether they must be celebrated on their proper day. The reason for the question

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is that there are two Decrees of the aforementioned Sacred Congregation.

[*Latin ed. p. 381*]

On the ninth of the month, two individuals, one on July 17, 1830, in Rhedone, seem to favor the translation [of the feast day], while the other, on November 12, 1831, in Rhedone and Cenomanes, instructs that the aforementioned feast day be celebrated on its proper day, but that the external solemnity be transferred to the nearest Sunday. Furthermore, the Sacred Congregation of Rites, after considering the report of the undersigned Secretary, deemed it fitting to declare: "Adhere to the Decree of November 12, 1831." And so it declared. On May 18, 1878, in ANICIENSIS. The Most Reverend Lord Peter Mark Le Breton, Bishop of Aniciensis, in Gallus, humbly requested a clarification from the Sacred Congregation, namely: "By the Indult of September 2, 1858, the external solemnity of certain feasts is transferred to the following Sunday in the Diocese of Aniciensis, and is celebrated with a votive Mass of the feast under a more solemn rite; furthermore, by the same Indult, in the choir, except for the Cathedral Church in which the Vespers appropriate to the day must be sung, it is permitted to sing the solemn Vespers three times on the feast day that has been transferred, and those who are obliged to privately recite the same Vespers are dispensed from the Vespers appropriate to the day. Therefore, the question is whether all clerics who are established in the sacred ministry and devoted to the divine Office, who sing the Vespers of the transferred solemnity in the choir, are also obliged to privately recite the Vespers of the day that falls on that day, or only those who were not present in the choir for the Vespers of the transferred solemnity. The reason for the doubt lies in general principles accepted among approved authors, by virtue of which some of our members believe they are excused from this double recitation. And the same Sacred Congregation, after considering the report of the undersigned Secretary, deemed it fitting to declare: "In this case, all are obliged to privately recite the Vespers of the feast that is in the calendar on that day, because the Vespers of the transferred solemnity are permitted only for the sake of devotion. And so it declared. On May 18, 1878, in BISUNTIN. The Most Reverend Lord Anthony Justin Paulinier, Archbishop of Bisuntin, humbly requested from the Sacred Congregation whether, in processions of St. Mark and the Rogation Litany, it is permissible to interrupt the procession to make a Station, either at a cross erected outdoors, or at a chapel, or at any church, and to resume the procession after the prescribed rite has been performed at the station itself, namely: "I. For all the people, the following passage is sung: 'O Lord, not according to our sins, etc.'"

[*Latin ed. p. 382*]

382 APPENDIX I. When the words are sung: "Adiuva nos, etc..." the

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singers and ministers kneel. Upon the completion of the verse, the Celebrant, rising, says the prayer: "Deus qui confessionem..." However, the Dean, when not performing the Office, makes the Confession together with the choir, saying "culpa offenderis, etc." Now, it is true that the Most Reverend Lord Eugenius Nanninius, the modern Dean and Ordinary of that Collegiate Church, having doubted whether such a custom could legitimately continue, presented the following questions to the Sacred Congregation for the Proper Ordering of Rituals, for a suitable declaration, namely:

Question I. Whether, when the Ordinary attends the choral Office, the hebdomadarius [weekly singer] ought to say in the Confession to be made, "Tibi Pater" or "po-..."

II. Then, he gives the blessing with the Reliquary or Image of the Blessed Virgin, or of some Saint, singing the following:

f. "Adiutorium nostrum in nomine Domini."

4. "Qui fecit coelum et terram."

f. "Sit nomen Domini benedictum."

1$. "Ex hoc nunc et usque in saeculum."

"Benedicat vos Omnipotens Deus Pater, et Filius, et Spiritus Sanctus. Amen."

Furthermore, the Sacred Congregation for the Proper Ordering of Rituals, after hearing the report of the undersigned Secretary, and the Most Reverend Cardinal Assessor, judged that the following should be answered: Regarding the part of the rite, nothing prevents it; but regarding the blessing, let what is prescribed by the Roman Ritual be observed. And thus it was written and ordered to be observed.

May 18, 1878.

In the illustrious Collegiate Church of Saint Michael at Lucena, a custom has been in force from time immemorial, that whenever the Confession is to be made in the choral Office, the hebdomadarius, bowing to the Dean, who holds the first and most prominent stall, says "Tibi Pater" and "Te Pater," and similarly, both the choir repeat "Vobis Fratres" and "Vos Fratres."

Whenever "Vobis Fratres?"

Question II. Whether the choir, bowing to the Dean or the hebdomadarius, ought to say the same.

Question III. Whether the Ordinary ought to say "Tibi Pater" to the hebdomadarius, or rather "Vobis Fratres."

Furthermore, the same Congregation, after hearing the report of the undersigned Secretary, and the opinion of another from the Masters of the Apostolic Ceremonies, judged that the following questions should be answered: Regarding questions I, II, and III, let the Ceremonial of the Bishops be observed, and therefore, the aforementioned custom should be abol-

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ished. And thus it was decreed and ordered to be observed.

May 25, 1878.

Atriensis.

Most Reverend Lord, as a brother. The prayers of the Chapter of this Church have been presented to the Sacred Congregation.

[*Latin ed. p. 383*]

The Cathedral Chapter, in order to obtain permission to perform divine services during the winter season in a certain place, of which it presented a plan, separate and distinct from the customary choir. The Sacred Congregation, after carefully examining the matter and obtaining the opinion of another expert in the writings of the Masters of the Apostolic Ceremonies, and also taking into account the information provided by the aforementioned Chapter, decided to respond as follows: It is not permitted, but the Bishop should provide for it according to his prudence. Therefore, the aforementioned Chapter should bring this decree of the Sacred Congregation to the attention of the aforementioned Chapter, and at the same time, with due diligence and liturgical expertise, take appropriate measures. Rome, May 25, 1878.

To the Most Reverend Lord, as to Brother Aloysius Martucci, Auxiliary Bishop of Atri, and Prefect of the Vicariate of Pinnen in the Foreign Vicariate of the Diocese of Novara.

For some years now, the five Canonically appointed Curates of the Collegiate Church of Saint Victor in the city of Intri, whenever they attended Congregations or Conferences of cases of conscience held by the aforementioned Parishes in the Vicariate, wore a mozzetta, as if they were Canons, and claimed precedence over the other, even older, Parishes. This, however, was poorly received by the Parishes of the Vicariate outside the city, and as a result, these Congregations were suspended in recent times to avoid serious disputes.

Now, the Parishes of the Vicariate outside the city, greatly desiring to restore the situation to its proper state for the spiritual good, humbly requested the Sacred Congregation to resolve the following doubt in order to definitively settle this controversy: Whether it is permissible for the Canonically appointed Curates of Intri to wear the Insignia of Canons and to claim precedence when they attend Congregations in the Church of the Vicariate?

The Sacred Congregation, after hearing the parties involved, based on the report of the undersigned Secretary, and also after obtaining the written opinion of another expert in the writings of the Masters of the Apostolic Ceremonies, decided to respond as follows: Regarding the first part: Let the Decree of Novara, dated December 10, 1707, be consulted. Regarding the second part: Precedence belongs to the Parishes according to their antiq-

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uity.

Thus it was written. May 25, 1878.

CONSTANTIEN.

To the Most Reverend Lord, Abel Anastasius Germain, Bishop of Constances. The Sacred Congregation inquired whether it is permissible...

[*Latin ed. p. 384*]

384 APPENDIX I. To a certain Canon of a Cathedral Church who wished to wear, in the choir, a decoration of various colors, made from a mozzetta, which had been awarded to him by doctors in sacred theology from the University of Sorbonne, but which had not been approved by the Holy See; the aforementioned Sacred Congregation, in response to the request submitted by the undersigned Secretary, replied: It is not permitted. June 26, 1878. GOA. Doubts were transmitted from the Sacred Congregation for the Propagation of the Faith, proposed by the Most Reverend present Archbishop of Goa, to the Sacred Congregation of Rites for a suitable declaration, namely: Doubt I. Whether the use, still prevalent in almost all the churches of the Archdiocese of Goa, of making sacred vestments, namely, amictus, albs, stole, as well as corporals, purificators, and pallias, from cloth made of cotton, is to be considered, given the present circumstances, as a corruption and abuse to be rejected, according to the General Decree of the Sacred Congregation of Rites of May 15, 1819, notwithstanding the Indults previously granted? Doubt II. And, in the affirmative case, whether it is permissible to use the aforementioned vestments for celebrating Mass, provided that, within two years, they are replaced in accordance with the General Decree? The aforementioned Sacred Congregation, after considering the report of the undersigned Secretary, declared: Regarding I: Affirmative. Regarding II: Negative with regard to corporals, purificators, and pallias; Affirmative, but by grace, with regard to the amictus, albs, and stole. And thus it declared and granted an Indult. July 23, 1878. VICARIATE APOSTOLIC OF BOTH GUINEAS. The Most Reverend present Apostolic Vicar of both Guineas presented to the Sacred Congregation of Rites that, in the regions of Guineas, the Tabernacle, decorated with various types of cotton fabric, is often found to be indecently infested with insects, to the extent that, even when opened, insects penetrate into the Tabernacle itself; therefore, he humbly inquired whether it would be permissible, in such a case, to allow the Most Holy Sacrament to be reserved in a Tabernacle that is not adorned with cotton fabric. The aforementioned Sacred Congregation, after mature deliberation, and with the report of the undersigned Secretary, considered it appropriate to reply: At the prudent discretion of the Ordinary, who will take care to consider the conditions of the place. And thus it replied. July 27, 1878. Note. — These Decrees, and those referred to in the following sections, have been taken from Appendix V, published in this last decade, by the Sacred Congregation of Rites, and are to be added

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to the collection of Decrees compiled by Gardellini. V. PIAZZESI.

[*Latin ed. p. 385*]

385 FROM THE CONSISTORY ACTS, on Tuesday, February 11, 1889, Our Most Holy Lord Pope Leo XIII held a Consistory in the secret palace at the Vatican, at which the Most Eminent and Reverend Cardinal Parocchi Perula presented to Our Holy Father, on behalf of the Sacred College of Cardinals of the Holy Roman Church, the names of those chosen for the present year, namely, the Most Eminent Cardinal Laurenzi, Chamberlain of the same Sacred College of Cardinals, and the Most Reverend Cardinal Vannutelli, to whom the title of Saint Jerome of Illyria was assigned, the title of Saint Sabina having been relinquished. Thereupon, Our Holy Father addressed the Cardinals as follows:

ADDRESS: "We know that a most grievous error is spreading, by which many, deceived by the appearance of attaining liberty, are gradually withdrawing from Jesus Christ and the Church. Indeed, the fruits of perverse doctrines, matured by the times and morals, are growing: and now it is almost a common vice, in both large and small states, to abandon the Christian form, to establish a civil discipline, and to administer all public affairs, with religion set aside.

Moved by such a state of affairs, We have never ceased to consider a remedy; and you yourselves, venerable brothers, are witnesses to the great effort and diligence We have put forth in this regard, so that it may become apparent how this most wretched departure from God will be remedied, and so that those who have strayed away may return to their Savior, the Only Begotten of God, in whose faith and protection they ought perpetually and confidently to find rest.

For these reasons, We have always striven to strengthen or establish ties with the empires of foreign nations. We are now endeavoring to restore relations with the most powerful empire of Russia; and We do not doubt that, according to what is hoped for, this will succeed. On this matter, We have devoted Our thoughts and efforts with singular zeal and equal benevolence, as is recorded in the Acts of the Congregation, Volume XXI, page 447, paragraph 25."

[*Latin ed. p. 386*]

386 FROM THE CONSISTORY ACTS concerning the state of Catholics among the Poles, and which greatly pertains to the ordering of the administration of their dioceses, several bishops have already been designated. It would have greatly pleased Us to announce them today in this most ample assembly of yours, were it not that the completion of the entire matter requires a little more time. We shall, however, persevere, as far as is in Us, in the same course, although this course is not infrequently hindered by the machinations of enemies. And in this endeavor, this thought confirms Us:

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that the Catholic Church is the one refuge of souls, the one hope of eternal salvation, and the most certain one; therefore, in this life full of struggles, it is Our duty to call all men to the bosom of the Church, as from a rough sea to a harbor, and to urge them especially to trust in its charity: for those who come to Her are always received with a maternal embrace, and healed by the light of the Gospel.

Furthermore, in this present age, such difficult circumstances have arisen that it is necessary to assist with all effort and zeal in matters common to all. For from all sides, as we ourselves saw even in these very last days in the City, popular passions inflamed and raging press urgently; and with the increasing audacity of evil, they attempt to strike at the very foundations of civil society. If the voice of religion were silent, and the divine laws, which command the restraint of the very movements of the soul, were removed, what force would remain in the states that would be sufficiently effective to repel these dangers? Therefore, in this endeavor to recall men to those places where the precepts of virtue and the principles of order are preserved in their integrity, the republic is truly benefited, and greatly merits the common good.

But there is another consideration to be made, one that presents a unique opportunity. For if it has ever happened that peaceful conditions were sought by the unanimous will of the people, certainly they are most desired at this time, when peace, tranquility, and leisure are on everyone's lips. The highest rulers, and all those who govern states throughout Europe, testify that they desire and strive solely to preserve the benefits of peace; and this is with the full agreement of all classes of citizens, for it is truly becoming more and more apparent every day that the people detest war. A most honorable detestation, if anything else: for while warfare can sometimes be necessary, it never comes without a great burden of calamities. How much more calamitous will it be in the future, with such a vast accumulation of forces, with such advanced knowledge of military affairs, and with such a multitude of instruments of destruction? When we consider these things, we...

[*Latin ed. p. 387*]

From the Consistorial Acts, we are inflamed with greater and greater charity for the Christian nations, and for their sake, we cannot but be deeply concerned and apprehensive of the dangers that threaten them. Therefore, nothing is so important as to prevent the peril that hangs over Europe; indeed, whatever is contributed for this purpose should be considered as contributing to the public good.

"However, mere desire and good will are not enough to ensure tranquility. Similarly, vast armies and an infinite array of war machines can contain a hostile attack for a time, but they cannot guarantee lasting and secure peace. Indeed, the very presence of arms is more likely to arouse

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fears and suspicions, filling minds with anxious expectations of the future, and causing burdens to be imposed on the people, which are often more grievous than war itself.

Therefore, the foundations of peace must be stronger and more firmly established, based on the nature of things. For it is permitted to defend one's rights by force and arms, provided it does not contradict nature. But nature does not allow force to be the efficient cause of right. Since peace is maintained by the tranquility of order, it follows that both private individuals and nations must strive for harmony, justice, and charity. To violate no one, to respect the rights of others, to cultivate faith and mutual goodwill – these are the strongest and most enduring bonds of concord, possessing such power that they allow no room for the seeds of enmity and rivalry to take root.

Indeed, God has commanded the Church to be the parent and guardian of both these virtues: and therefore, the Church has nothing more sacred, nor will it ever have, than to preserve, promote, and defend the laws of justice and charity. With this purpose, the Church has traversed all lands; and it is beyond doubt that she has led barbarous peoples, softened by a love of justice, from the brutality of warfare to the arts of peace and humanity. She commands all, whether humble or powerful, whether parents or rulers, to observe justice, and to seek nothing through injustice. She is the one who has united all peoples, however different in place or nature, in a bond of brotherhood and charity. And she earnestly remembers the laws and examples of her divine Author, who wished to be called the King of Peace, whose very birth was announced by heavenly proclamations of peace. She desires that people may find rest in the beauty of peace, and she strives with much prayer to persuade God to defend the peoples from the ravages of war. As long as it has been necessary and permitted, nothing has been more pleasing to her..."

[*Latin ed. p. 388*]

388 Through the Acts of the Consistory, exercising His authority, He labored for the reconciliation of concord and the pacification of kingdoms. For these reasons and causes, which are most important and most holy, We are moved, venerable brothers, and We obey. Whatever events may occur in Kosso, whatever words or actions men may utter, all Our actions will be guided by the same standard: from this path, it is certain that We shall not deviate. Finally, if it is not permissible to merit peace in any other way, We shall certainly persevere in seeking Him, without anyone preventing us, who can bend the wills of men, as He wills, and direct them as He wills: and We earnestly pray that, with all fear of war banished, and with due order restored by His benevolence, Europe may find rest in true and lasting stability. Furthermore, venerable brothers, before We proceed to the new appointments of Bishops, We are about to elevate to the honorable rank

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of Cardinal three men, whose virtues are not unknown to you: namely, JOSEPH BENEDICT DUSMET, of the Order of Saint Benedict, of Monte Cassino, Archbishop of Catania, distinguished by the virtues proper to a Bishop, and especially by prudence and charity; JOSEPH D'ANNIBALE, Bishop in title of Charysten, Assessor of the Holy Roman and Universal Inquisition, renowned for his integrity, modesty, and abundance of learning; and ALOISIUS MACCHI, Prefect of Our Pontifical House, proven by the integrity of his character, and who has diligently fulfilled various duties and honors. What do you think? Therefore, by the authority of Almighty God, of the holy Apostles Peter and Paul, and Our own, We create and proclaim the following: Most Reverend Cardinals, from the Order of Presbyters, JOSEPH BENEDICT DUSMET; JOSEPH D'ANNIBALE. From the Order of Deacons, ALOISIUS MACCHI. With the necessary and appropriate dispensations, derogations, and clauses. In the Name of the Father, and of the Son, and of the Holy Spirit. Amen.

[*Latin ed. p. 389*]

FROM THE CONSISTORY ACTS 389. After this Allocution was concluded, His Holiness proposed the following appointments:

The Metropolitan Church of Florentia, vacant due to the death of the Most Reverend Eugenius Cecconi, the former Archbishop, who died outside the Roman Curia, with the favor of the Most Eminent and Reverend Lord Augustine, of the Order of the Preachers, Cardinal Deacon of Saint Mary in Domnica, retaining his deaconry.

The Archiepiscopal Titular Church of Siden, vacant due to the promotion of the Reverend Father Julius Lenti to the patriarchal titular Church of Constantinople, with the favor of the Reverend Father Seraphinus Milani, of the Order of the Friars Minor Observant of Saint Francis, Bishop of Apuana.

The Archiepiscopal Titular Church of Rhodi and the Cathedral See of Meliten, perpetually and canonically united, vacant due to the death of the Most Reverend Carmel Scicluna, the last Bishop, who died outside the Roman Curia, with the favor of the Reverend Father Peter Pace, Bishop of Gaudiensis.

The Metropolitan Church of Señen, vacant due to the death of the Most Reverend John Pierallini, the former Archbishop, who died outside the Roman Curia, with the favor of the Reverend Celestinus Zini, a priest of Florentia. He was born of legitimate, Catholic, and honorable parents in Florencia, and has surpassed his sixty-third year. From his youth, he entered the Order of Clerics Regular of the Poor, of the Schools of the Mother of God, and was solemnly professed there, and recently received the character of priesthood. Until now, he has served as a professor of philosophy and history in the Lyceum, and has been assigned among the pre-synodal examiners of Fesula, and has fulfilled the office of Rector and Provincial for

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Hetruria in his Order.

The Archiepiscopal Titular Church of Seleucien, vacant due to the death of the Most Reverend Camillus Santori, the former Archbishop, who died within the Roman Curia, with the favor of the Reverend Father Tancredus Faustus, a priest of Rome. He was born of legitimate, Catholic, and honorable parents in Rome, and has reached the eighth year beyond his fiftieth. Among the clergy of Rome, besides other duties, he has been assigned as an examiner and as an Urban Bishop, and most recently, he has resigned from the office of Vicar of the Most Eminent and Reverend Cardinal Archpriest of the Patriarchal Archbasilica of the Lateran.

The Archiepiscopal Titular Church of Trapezuntin, vacant due to...

[*Latin ed. p. 390*]

390 FROM THE CONSISTORY ACTS, the death of the Most Reverend George Errington, the last of that rank, who died outside the Roman court, is reported. This occurred with the favor of the Reverend Father Edmund Stonor, a priest of the Birmingham diocese. He was born to legitimate, Catholic, and noble parents in the place called Stonor, in the Birmingham diocese, and having reached the fifty-eighth year of his age, he was admitted to the Pontifical Academy of Noble Ecclesiastics in Rome, where he obtained a doctorate in Canon Law. He was subsequently enrolled by His Holiness Pope Pius IX among the Urban Anti-Stites and Apostolic Protonotaries, and he had also, until now, held the position of Canon of the Patriarchal Basilica of the Lateran. The CATHEDRAL CHURCH of SUA.NEN. PITILIANEN is likewise perpetually canonically united, and is vacant, having been relinquished by the Reverend Father Anthony Sbrolli, who recently passed away, having willingly and freely completed his service in the hands of His HOLINESS, and through his subsequent promotion to the titular Archiepiscopal Church of Naupactus, with the favor of the Reverend Father Julius Matteoli, a priest of the diocese of San Miniato. He was born to legitimate, Catholic, and noble parents in Castrofranco, in the diocese of San Miniato, and having reached the forty-eighth year of his age, he had previously been awarded a doctorate in sacred theology. He served as a professor of philosophy in the diocesan seminary, and as a master in theology. He also served as a substitute, an examiner, and at times as a judge in the curia of San Miniato. He was added among the chamberlains of His HOLINESS, and until now, he had relinquished the position of Archpriest-Parish Priest in his place of birth. The CATHEDRAL CHURCH of APUAN is vacant, having been relinquished by the Reverend Father Francis Seraphino Milani, of the Order of the Observant Minor Friars of Saint Francis, who willingly and freely completed his service in the hands of His HOLINESS and was admitted by the same. And through the subsequent promotion of the same Prelate to the titular Archiepiscopal Church of Sidense, with the favor of the Reverend Father David Camilli,

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a priest of the archdiocese of Lucania. He was born to legitimate, Catholic, and honorable parents in the place commonly called Ghivizzano, in the archdiocese of Lucania, and having surpassed the forty-second year of his age, he had previously been awarded a doctorate in sacred theology; he was the general vicar for spiritual affairs of the diocese of Mutilana, and was chosen as a pro-Synodal examiner, among the members of either the Synodal Congregation or the philosophical-medical academy of Saint Thomas Aquinas; he was also a diocesan visitor, at the seminary and at the Episcopal residence.

[*Latin ed. p. 391*]

FROM THE CONSISTORY ACTS 391: The position of Prefect of Studies and, in that same Cathedral, the Canon and Archdeacon, have both been vacated. The CASSANEN CATHEDRAL is vacant, due to the death of the Most Reverend Anthony Pistocchi, the last Bishop of that See to have died outside the Roman Curia, by the favor of the Reverend Father Francis Evangelista of Caletr, of the Order of the Friars Minor Capuchin of Saint Francis, a Priest of the archdiocese of Compsana. Father Francis Evangelista, in the world Michael Anthony of Milia, born of legitimate, Catholic, and honorable parents in the territory of Caletr, in the archdiocese of Compsana, and having surpassed his forty-seventh year, has been appointed, for the performance of ecclesiastical duties, specifically as a Missionary of the Word of God, preaching in the French, English, and Italian languages, to the archdiocese of Hydruntina, and has been assigned as an Examiner for the Synod, and has been constituted President of Saint Lawrence outside the city walls. The MILETEN CATHEDRAL is vacant, due to the death of the Most Reverend Aloysius Carvelli, the last Bishop of that See to have died outside the Roman Curia, by the favor of the Reverend Father Anthony De Lorenzo, a Priest of Reggio. He, born of legitimate, Catholic, and honorable parents in Reggio, and having surpassed his fifty-third year, is numbered among the Examiners for the Synod, and has been the Fiscal Promoter in the tribunal of the Reggio Curia, and until now, has been the titular Canon of that metropolis. The CATHEDRAL of PLEBIS is vacant, due to the death of the Most Reverend Emydius Foschini, the last Bishop of that See, to have died outside the Roman Curia, by the favor of the Reverend Father Paul Gregory, a Priest of the diocese of Città della Pieve. He, born of legitimate, Catholic, and honorable parents in the parish of Saint Sylvester, in the territory of Plagar, in the diocese of Civita Pieve, and having reached his fifty-ninth year; in Perugia, he administered the parish and the church of Castillion Fasci, and then, the church of Saint Mary of the Hill, in the city of Perugia, of which he was, until now, the Canon and Parish Priest, and he has been an Examiner for the Synod, and has served in the Congregation for Moral Affairs of the Parishes and Confessors. After the assumption of the Chair of Saint Peter by Pope Leo XIII, by His Apostolic Administrator

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in the governance of the diocese of Perugia, he was constituted General Pro-Vicar in spiritual matters, and was added to the intimate circle of His Holiness, for honors. The CATHEDRAL of NARNIEN is vacant, due to the death of the Most Reverend Vitalis Gralli, the last Bishop of that See, to have died outside the Roman Curia.

[*Latin ed. p. 392*]

392 FROM THE CONSISTORY ACTS, with the favor of the Reverend Father Caesar Boccanera, a priest of Rome. He, born of legitimate, Catholic, and honorable parents in Rome, having reached the forty-ninth year of his age, and having previously received the doctoral degree in both philosophy and sacred theology, having once served as a member of the Curia of the Basilica of Saint Mark in the City, was, many years ago until the present time, appointed as both parish priest and beneficiary at the Patriarchal Basilica of Liberian.

The CATHEDRAL CHURCH of Linz is vacant, due to the death of the Reverend Father Ernest Müller, the last bishop of that diocese, who died outside the Roman curia, with the favor of the Reverend Father Francis Salesius Doppelbauer, a priest of the Linz diocese, at the nomination of Francis Joseph I, Emperor of Austria.

The Reverend Father Francis Salesius Coppelbauer, born of legitimate, Catholic, and honorable parents in Waizenkirchen, in the Linz diocese, and having surpassed the forty-third year of his age; having received the doctoral degree in both branches of law, he has served as Chancellor of the Ordinariate and as Counselor for ecclesiastical judgments in contentious and penal matters. Formerly a chaplain in Rome, Vice-Director, and until now Rector at the Imperial and Royal German Institute of Saint Mary of the Angels, he has been appointed among the urban vicars of His Holiness.

The CATHEDRAL CHURCH of Septempeda, or Saint Severinus, is vacant, due to the voluntary resignation of the Reverend Father Francis Mazzuoli, carried out freely and spontaneously in the presence of His Holiness and accepted by the same, and due to the transfer of that same prelate to the titular Episcopal Church of Himesia, with the favor of the Reverend Father Aurelius Zonghi, a priest of Fabriano. He, born of legitimate, Catholic, and honorable parents in Fabriano, and having reached the fifty-ninth year of his age, has previously received the doctoral degree in sacred theology and in both branches of law. He has served as a professor of both branches of law at the paternal seminary, as a visitor, as administrator of the Episcopal table, as a prior pro-Synodal examiner, and until now as a Synod member. He is the Vicarius Lateranensis, and has been appointed President of the Congregation of Priests for the purpose of providing charitable assistance through loans, among the urban vicars of His Holiness, and is currently a Canon of the Fabriano Cathedral.

The CATHEDRAL CHURCH of Reate is vacant, due to the transfer of

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the Reverend Father Giles Mauri, of the Order of the Preachers of Saint Dominic, to the churches of Auxima and Cingulana, united to each other, with the favor of the Reverend Father Charles Bertuzzi, a priest of the Archdiocesan of Bologna. He, born of...

[*Latin ed. p. 393*]

From the official records, a man born in the town of Cento, in the archdiocese of Bologna, to legitimate, Catholic, and honorable parents, having surpassed his sixtieth year, who had previously received a doctorate in sacred theology, having been chosen as a canon in the collegiate church of his homeland, and having been associated with several learned and literary academies, having diligently fulfilled numerous offices and delegations at the seat of Cervia. He served as a professor of moral theology at the seminary of Cervia, and having previously resigned from the general vicariate in spiritual matters for that city and diocese, he was appointed among the domestic prelates of His Holiness.

The titular episcopal see of Himerius, under the archdiocese of Edessa, is vacant, following the death of the Most Reverend Francis Vitagliano, the last bishop of that see outside the Roman curia, with the favor of the Most Reverend Father Francis Mazzuoli, the episcopal cathedral priest of the church of Saint Severinus.

The cathedral church of Aquen, in the Piedmontese province, is vacant, following the death of the Most Reverend Joseph Mary Sciandra, the last bishop of that see outside the Roman curia, with the favor of the Reverend Joseph Marello, a priest of the diocese of Asti.

He was born in Augsburg, to legitimate, Catholic, and honorable parents, and having surpassed his forty-fifth year; he was transferred from his town of origin, Saint Martin near Tanarum, in the diocese of Asti, and dedicated himself with diligence to hearing sacramental confessions, serving in the hospitals of the Religious Virgins, among the students of the seminary, in the girls' boarding school, and other institutions, and devoted himself entirely to the chronic care and support of pious works. He was appointed a canon, and then elected a canon by the chapter of Saint Philip of Messines in Asti, and was subsequently appointed to the dignity of archdeacon, which he holds to this day.

The cathedral church of Gaudisien is vacant, following the transfer of the Reverend Father Peter Pace to the churches of Rhodes and Malta, which are perpetually and canonically united with each other, with the favor of the Reverend Father John Camilleri, of the Order of Hermits of Saint Augustine.

He was born in the city of Valletta, in the diocese of Malta, to legitimate, Catholic, and honorable parents, and having reached his forty-sixth year. In Rome, after completing philosophical and theological studies at the Col-

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lege of Saint Augustine, he obtained the degrees of lecturer and regent, and was awarded a doctorate. He was elected to the provincial administration to oversee the studies of his order in the aforementioned city of Mdina. Upon returning to the city, he served as a professor of both moral and dogmatic theology, and was appointed as a consultant among the bishops and regular canons of the Sacred Congregation.

[*Latin ed. p. 394*]

394 FROM THE CONSISTORY ACTS: After these things, the Most Reverend and Right Reverend Bausa stood before Our Holy Father, urgently, more urgently, and most urgently requesting that the Pallium, taken from the body of Saint Peter, be given to him for the Church of Florence, to which he had been elected, and having received the response from His Holiness, "We shall grant it shortly," he then took the oath of fidelity before the aforementioned Holiness. On Thursday, February 11, 1889, a public Consistory was held in the Royal Hall at the Vatican, in which Our Holy Father, Leo XIII, presented the red galero to the Most Reverend and Right Reverend Cardinals Joseph Benedict Dusmet, of the Benedictine Order of Monte Cassino, Archbishop of Catania, and Aloysius Macchi, Prefect of the Pontifical Household, who had been created and declared Cardinals just four days prior, together with Joseph D'Annibale, titular Bishop of Charybdis, and Assessor of the Holy Roman and Universal Inquisition, who was absent due to poor health. There, the Knight Hilarius Alibrandi, Consistorial Advocate, presented the case for the third cause for the beatification of the Venerable Handmaid of God, Mary Rivier, of Viviers, Foundress of the Congregation of the Presentation of the Blessed Virgin Mary, requesting the decree for beatification. To this petition, the Reverend Father D. Augustine Caprara, Promoter of the Faith, objected, and prayed that the cause be first examined by the Congregation of Sacred Rites, and His Holiness deigned to respond with these words: "Let it be presented to the Congregation of Sacred Rites, so that it may examine it and report." After the public Consistory, a Secret Consistory was held in the upper buildings of the Vatican Palace, in which the Most Reverend and Right Reverend Cardinal Bausa, of the Order of Preachers of the Holy Roman Church, recently transferred to the metropolitan See of Florence, having obtained permission from His Holiness, received the dispensation to proceed from the order of deacon to the order of presbyter, and relinquished the diaconate of Saint Mary in Domnica, and requested the title of Saint Sabina. Our Holy Father, as is customary, then spoke in private with the Most Reverend and Right Reverend Cardinals Dusmet and Macchi, so that they might not hear.

[*Latin ed. p. 395*]

FROM THE CONSISTORY ACTS 39: To express an opinion, in Consis-

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tories, Congregations, or other Cardinalatial functions, the following sees were proposed:

THE METROPOLITAN CHURCH OF COMPOSTELLA is vacant, due to the death of His Most Reverend Excellency, Victoriani Guisasola and Fernandez, the last Archbishop of that see, who died outside the Roman curia, with the favor of the Reverend Father, Doctor, Joseph Mary Martin de Herrera and de la Iglesia, Archbishop of Saint James of Cuba, for presentation to the Most Serene Queen of the Cattolica.

THE METROPOLITAN CHURCH OF CAMERACEN is vacant, due to the death of His Most Reverend Excellency, Francis Edward Hasley, the last Archbishop of that see, who died outside the Roman curia, with the favor of the Reverend Father, Odon Thibaudier, Bishop of Soissons, for the nomination of the most illustrious man, Francis Mary Sadi-Carnot, President of the Gallic Republic.

THE METROPOLITAN CHURCH OF SAINT JAMES OF CUBA in South America is vacant, due to the translation of the Reverend Father, Doctor, Joseph Mary Martin de Herrera and de la Iglesia, to the Metropolitan See of Compostella, with the favor of the Reverend Father, Joseph Mary de Cos and Macho, Bishop of Mondoñedo, for presentation to the Most Serene Queen of the Cattolica.

THE CATHEDRAL CHURCH OF PICTAVIE is vacant, due to the death of His Most Reverend Excellency, James Edmund Henry Philadelphi Bellot des Minières, the last Bishop of that see, who died outside the Roman curia, with the favor of the Reverend Father, Augustine Hubert Luteau, a priest of the archdiocese of Tours, for the nomination of the most illustrious man, Francis Mary Sadi-Carnot, President of the Gallic Republic.

The Reverend Father, Augustine Hubert Luteau, was born of legitimate, Catholic, and honorable parents in the place commonly called Benais, in the archdiocese of Tours, and having reached his fiftieth year, was chosen as a Parish Vicar for Saint Mauritius in the city of Chinon, and subsequently as a Parish Priest of the place commonly called Sovigny, and then successively of Saint James and Saint Francis in the city of Tours, and is currently a Canon of its Chapter, having renounced that office.

THE CATHEDRAL CHURCH OF TIRASO is vacant, due to the death of His Most Reverend Excellency, Cosma Marrodan and Rubio, the last Bishop of that see, who died outside the Roman curia, with the favor of the Reverend Father, John Soldevila and Romero, a priest of the diocese of Zamora, for presentation to the Most Serene Queen of the Cattolica.

The Reverend Father, John Soldevila and Romero, was born of legitimate, Catholic, and honorable parents in the place commonly called Fuente la

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Peña, in the diocese of Zamora, and at the age of four...

[*Latin ed. p. 396*]

396. Having completed the fifth year of his age, having previously received the doctorate in sacred theology, having resigned from the office of Economus of the parish of Triplicis, and having served as Archpriest in the metropolitan Chapter of Vallisoletano until the present time, the Cathedral Church of Curiensis, vacant due to the death of the Most Reverend Father Franciscus Constantinus Rampa, the last Bishop of that see, who died outside of Rome, has been filled, with the favor of the Reverend Father Ioannes Fidelis Battaglia, a priest of the diocese of Curiensis, who was elected Bishop of Curiensis by the Reverend Chapter and Canons of that Church, according to the decree of the Sacred Congregation of the Consistory, which was approved by His Holiness. The Reverend Father Ioannes Fidelis Battaglia was born of legitimate, Catholic, and honorable parents in the diocese of Curiensis, and has reached the sixtieth year of his age. Having been associated with the students of the German College in Rome, and having completed his studies in philosophy, theology, and law there, he has served as Professor in a seminary for boys, as a parish priest, as Spiritual Director of the Sisters of the Most Holy Cross in Ingenbohl, as Episcopal Chancellor, and has also performed the office of Official, while also serving as Antistite of the diocese of Curiensis.

The Cathedral Church of Truxillo, in the Peruvian territory of South America, vacant due to the death of the Most Reverend Father Iosephus Dominicus Armestar, the last Bishop of that see, who died outside of Rome, has been filled, with the favor of the Reverend Father Emmanuel Iacobus Medina, a priest of Lima, through the presentation of the most illustrious man Andreas Avellini Caceres, President of the Republic of Peru, by virtue of an Apostolic Indult. The Reverend Father Emmanuel Iacobus Medina was born of legitimate, Catholic, and honorable parents in Lima, and has surpassed the fifty-third year of his age; he has previously attained the doctorate with honors in theology, and has been appointed as Major Chaplain of the Order of Hermits of Saint Augustine, and as Apostolic Visitor of the monastery of Saint Catherine in Lima. There, he has performed the duties of Ecclesiastical Judge, Fiscal Promoter, and Secretary of the Camera and Government of the Archbishopric, and has been appointed as Commissary for the Cause of Beatification. He has successively resigned from the offices of Canon of the Chapter of Mercy, of Magistral, and of Praecentor.

The Cathedral Church of Punien, in the Peruvian territory of South America, has been filled, with the favor of the Reverend Father Ismaelis Puirredon, a priest of Lima, through the presentation of the most illustrious man Andreas Avellini Caceres, President of the Republic of Peru, by virtue of an Apostolic Indult. The Reverend Father Ismaelis Puirredon was born of legitimate, Catholic, and honorable parents in Lima, and has reached

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the fourth year beyond his thirtieth year of age.

[*Latin ed. p. 397*]

FROM THE ACTS OF THE CONSISTORY, 397: A presbyter, having previously received a doctorate in sacred theology, who had served in the Secretariate for the selection of priests, and who had held the office of Pro-Secretary in the diocese of Puno, and who, as a foreign vicar for the province of Azancari, and as a pastor to Saint Jerome of Asillo in the diocese of Puno, has now resigned. THE EPISCOPAL CHURCH OF JULIOPOLIS, under the Archbishop of Nicaea, is vacant, due to the promotion to the Archiepiscopal See of Skopje of the Reverend Father Andrea Lagorezzi, by the favor of the Reverend Father Hubert Anthony Fischer, a presbyter of the archdiocese of Cologne. He, born of legitimate, Catholic, and honorable parents in the archdiocese of Cologne, having reached the forty-ninth year of his age, and having previously received a doctorate in sacred theology, devoted to the regulation of religious matters, and having at times been engaged in the care of souls, served as a professor of religion in the gymnasium of Essen in the archdiocese of Cologne. Furthermore, His Holiness announced the churches, by name, which have been provided for since the last Consistory, namely: The Reverend Father Andrea Lagorezzi has been promoted from the title of Juliopolis to the Archiepiscopal See of Skopje. The Archbishop, with the honor bestowed upon him by the aforementioned Holy Father, has resigned the archpresbytership of the Reverend Father Daniel Murphus, who was previously the Bishop of that See. The Reverend Father Franciscus Ionssens has been transferred from Natchesium to the metropolitan See of New Orleans. The Reverend Father Andrea Navarre, Bishop of Pentanomia, Apostolic Vicar for Melanesia and Micronesia, has been granted the Archiepiscopal title of Cirrense. The Reverend Father Guglielmo Scarisbrich, who bid farewell to the Church of Portus Aloysius, has been granted the Archiepiscopal titular church of Cyzicene. The Reverend Father Guido Corbelli, of the Order of the Observant Minor Friars, Apostolic Delegate for Egypt and the Orient, and Vicar for the Latins of Egypt, has been granted the Archiepiscopal title of Pelusii. The Reverend Father Iosephus Adolphus Gandy, Bishop of Tricen and Coadjutor Archbishop of Pondicherry, has been granted the Archiepiscopal titular church of Claudiopolis.

[*Latin ed. p. 398*]

398 FROM THE CONSISTORY ACTS: The titular see of Adrianopolis was conferred upon the Reverend Father Dom Rodensind Salvado, of the Benedictine Order, Abbot of New Norcia, who had relinquished the See of Port Victoria. The titular church of Phacus was granted to the Reverend Father Henry Borgess, who had relinquished the See of Detroit. The titular church of IaÅ□i was granted to the Reverend Father John Joseph Keane,

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who had relinquished the See of Richmond. The Reverend Father Edward Grasnier was transferred from the See of Emorpi to the See of Malacca, by the same Holy Father, to a cathedral erected there. The Reverend Father Symphorian Monard, of the Order of the Capuchin Minor Friars, titular Bishop of Gydonia, was transferred to the See of Lahore, also by the same Holy Father, who adorned it with the dignity of a cathedral. The Reverend Father Joseph Thomas Bowling was transferred from the See of Peterborough to the See of Hamilton. The cathedral church of Sinaloa in Mexico, within the territory of America, which had become vacant through the death of the Most Reverend Joseph of Jesus and Mary Uriarte, the last Bishop to die outside the Roman Curia, was conferred upon the Reverend Father Joseph Maria Portugal, of the Seraphic Order of the Minor Friars of Saint Francis, a priest of the city of Mexico. The Reverend Father Joseph Maria Portugal, born of legitimate, Catholic, and honorable parents in the city of Mexico, and having reached the fiftieth year of his age, was chosen by the Secretariate from among the members of his Order as General Commissary for Mexico, and has hitherto held the offices of that Commissariat. Having administered the care of souls for many years, and having been a parish priest in the archdiocese of Guadalajara until recently, he now relinquishes that office. The titular church of Chicontimien, separated from the archdiocese of Quebec by the Holy Father and erected as a cathedral, was conferred upon the Reverend Father Louis Nazano Bigin, of the same archdiocese. The cathedral church of Basle, to which is also canonically attached the cathedral church of Lugano, which had become vacant through the death of the Most Reverend Frederick Fiala, the last Bishop to die outside the Roman Curia, was conferred upon the Reverend Father Leonard Haas, a priest of the diocese of Basle, unanimously elected by the Chapter and Canons of that cathedral. He was born of legitimate, Catholic, and honorable parents in the village of Horve, in the diocese of Basle and the district of Lucern, and has surpassed his fiftieth year, having served as a curate, or as the parish priest of his native place, or in the city of Lucern, and also in Turich, in the diocese of Coire, where he is now.

[*Latin ed. p. 399*]

FROM THE CONSISTORY ACTS 399, he governed the parish in Dietikon. For many years, he was the Professor of Moral and Pastoral Theology at the University of Lucern, the parish priest appointed to Hitzkirch in the same region, and until recently, a distinguished canon of the Collegiate Church of St. Leodegarius in the city of Lucern, and the Rector of the diocesan seminary, having resigned. The Archbishop of Pult was appointed the Reverend Father Lawrence De Petris Dellammare, Apostolic Protonotary. The Reverend Father Thomas Heslin provided for the Church of Natchen. The Archbishop of Peterborough, whose church was elevated to a cathedral by His Holiness, was appointed the

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Reverend Richard O'Connor. The Archbishop of Wichita was appointed the Reverend John Hemessy. He was promoted to the See of Detroit, the Reverend John Foley. The title of Bishop was conferred upon the Reverend Leontius Bri doux, a missionary in Algeria, Apostolic Vicar in Tanganyika, for the Church of Uzès. Provision was made for the Reverend James Cronzet, of the Congregation of the Mission, Apostolic Vicar in Eastern Africa, for the titular Church of Zephyrium. The Reverend Father Benjamin Christiaens, of the Order of Friars Minor, Apostolic Vicar for the Southern Hu-pé region, was appointed titular Bishop of Colophonemis. The Reverend Father Peter Paul De Marchi, of the Order of Friars Observant, Apostolic Vicar in Northern Canton, was promoted to the titular Episcopal See of Suren. The Reverend Father Michael Comerford, parish priest and rural dean in the diocese of Kildare, was appointed titular Bishop of Corycens, having been appointed perpetual coadjutor to the Archbishop of Kildare. He appointed the Reverend Joseph Higgins as an Auxiliary Bishop to the Cardinal Archbishop of Sydney, with the title of the Church of Antiphellis. Afterwards, Our Holy Lord opened His mouth, as usual, to the Eminences and Reverend Cardinals Dusmet and Macchi, so that in Consistories, Congregations, and all other Cardinalatial functions, wherever they may be, they might express their votes; and after a pressing, more pressing, and most pressing request from the consistorial advocates for the pallia for the churches provided for in both Consistories, and in the second, which were revealed, namely, the united churches of Rhodes and Melitene, Siena, Santiago de Compostela, Cambray, St. James of Cuba, Skopje, Hobart, and Novae.

[*Latin ed. p. 400*]

400 FROM THE ACTS OF THE CONSISTORY at Aureliae, he granted and assigned to the Most Reverend and Most Reverend Lords Cardinals, by bestowing upon them a precious ring, the following titles: To the Most Reverend and Most Reverend Cardinal Dusmet, the church of Gentiane; and to the Most Reverend and Most Reverend Cardinal Macchi, the diaconate of Saint Mary in Domnica.

FROM THE HOLY CONGREGATION OF THE COUNCIL, FIRMANA, concerning PAROCHIAL RIGHTS, on the 7th of April, 1883, and the 16th of June, 1888, Session 24, chapter 13, concerning reforms. A SUMMARY OF FACTS. In the Diocese of Firmana, there is a vast territory, interspersed with hills and streams, approximately ten thousand paces in width and more than ten thousand paces in length, which lies between the Adriatic Sea and the interior lands of Monte Granaro and Monturano, and is surrounded by two rivers, the Chienti and the Tenna, which flow from this area towards the sea. From the town of S. Elpidio, which is the principal town there and lies closest to the interior lands, this territory is called Elpidiano. From the beginning, there were three parishes there: namely, Saint

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Michael, Saint Andrew, and Saint Bartholomew; but from the year 1591, this division ceased, and a single parish title was established for the entire territory, namely the church of Saint Elpidio, which, at that time, was being elevated to a collegiate church by Gregory XIV, in the town of the same name.

[*Latin ed. p. 401*]

In the year 1745, Alexander Borgia, Archbishop of Fermo, during a pastoral visitation, discovered that a portion of the faithful within the territory of Elpidia lacked necessary spiritual assistance. "And because of the multitude of the people, and the extent of the land, some were dying without the sacraments of the Church, and most without priestly assistance, especially in the areas furthest from the town; and the boys and girls residing in the countryside were not being instructed in the fundamentals of the Christian faith; (therefore) he began to consider the establishment of some chapels with resident priests." And he erected the first one in the region called "Corva," where a chapel was dedicated to the Blessed Virgin Mary. He improved it at his own expense, decorated it, and provided a small house for the priest. The region of Corva is located near the coast and near the river Tenna, which flows south of the aforementioned territory. Therefore, after consulting with the archpriest and the chapter, and after carefully defining the boundaries, he separated the inhabitants of that region "from the collegiate and parish church of St. Elpidia, as stated in the document of its establishment, and he subjected this new chapel with a resident priest, called the Chapel of St. Mary of Corva, with all the rights of a parish, except for the font of baptism, which remains with the mother church." Furthermore, he decreed that the new chapel, which he called a "parish," would be established "with the prior consent and regular examination" of the candidate: he assigned "five measures of wheat, to be provided annually by the clergy of the same church from the surrounding farms" as the priest's salary; he ordered that "as a sign of the jurisdiction of the priest for the time being," five *Julia* (a measure of wine) be paid annually to the Archbishop; and finally, "to maintain due honor to the mother church," he ordered that the priest of the chapel should participate in the evening prayers and Mass on the feast day of St. Elpidia, and on the solemn feast of the Body and Blood of Our Lord Jesus Christ, in a solemn supplication at the mother church. In the year 1758, the same Archbishop, also acting in accordance with the decree of the Sacred Congregation [of Rites], dated February 28, 1750, established another chapel with a resident priest, for the same reasons that had prompted him during the aforementioned pastoral visitation, which concerned the parish.

[*Latin ed. p. 402*]

402 In Fermo, they had previously determined to establish a parish ded-

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icated to Saint Mary of Corva. Therefore, they chose a region in Arellum, also located near the sea, but near the Chienti River, which marks the northern boundary of the territory. And there, they arranged for the construction of a church which they dedicated to the Most Holy Angels. In the establishment of this new parish, everything proceeded in the same manner and according to the same regulations as for the parish of Saint Mary of Corva. They were only able to assign a chaplain-curate, not five, but fifteen measures of wheat, of which ten were promised to be paid by the Society of Saint Mary of Mercy; therefore, they granted him the authority, both for the initial appointment and for subsequent presentations, to present three priests, and one, according to the approved form, for the governance of the parish, to be appointed by the Ordinary. The first parish priest was sent into possession of this new parish, namely, the priest Pennesi, accompanied by some canons of the collegiate church, and the Archpriest, who, after delivering a sermon, presented the new chaplain-curate to the people. This took place on February 3rd of the year 1758. On the 14th of the same month and year, the Archpriest and the canons, having changed their minds, not only opposed the establishment of the new chaplaincy of the Most Holy Angels, but also that of Saint Mary of Corva. The case was brought before the Sacred Congregation of the Council, and after careful deliberation, with two questions proposed, namely: I. Whether the division made by the Most Reverend Archbishop of Fermo is to be upheld in this case? II. Whether there are any objections, and how they are to be addressed in this case? The Sacred Congregation, on December 15th, 1759, responded: To I. Affirmative, and moreover. To II. Negative, and moreover. Therefore, the Sacred Congregation fully approved both divisions, and the appointment of the chaplains of both chaplaincies, as it had been carried out by the Archbishop of Fermo. And although the chaplain of Saint Mary of Corva did nothing before the Sacred Congregation to defend his rights, nevertheless, the judgment pronounced by the Sacred Congregation favors him, because the chapter of Saint Elpidius was acting against both chaplaincies. Notwithstanding the definitive judgment pronounced by the Sacred Congregation.

[*Latin ed. p. 403*]

In Fermo, the canons obtained a new hearing. Therefore, the very cause, which seemed to have reached a definitive judgment, began to be more vigorously debated before the Sacred Congregation, between the chapter and the curate of the parish of the Holy Angels, without the curate of Saint Mary of Corva being involved. However, it appears that, with this new development in the case, the strength of the disputants diminished, and consequently, they began to discuss a settlement. On the 4th of May, in the year 1763, a public instrument of Concord was requested between the parties, and, with the declaration of the Archbishop of Fermo still in effect, in which he stated that he wished to reserve in favor of the mother

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church, in addition to the right of baptism, also the right of burial and the collection of tithes, the parties agreed that the right of baptism, of collecting tithes, and of burial should remain reserved in favor of the mother church. Furthermore, it was agreed that the inhabitants of the portion of territory assigned to the parish of the Holy Angels could fulfill the precept of Paschal communion, both in the church of the Holy Angels, with the reservation of a dispensation through the use of the *texera*, commonly called the *Biglietto Pasquale*, in favor of the mother church. This agreement was communicated by Pope Clement XIII and he wished to include it entirely in a bull issued on the 23rd of June, in the year 1763. After a brief period of calm, the controversy between the chapter and the curate of the Holy Angels began again in the year 1772, this time between the same chapter and the curate of Saint Mary of Corva, Joseph Ripari, who called the chapter to judgment, in order that the peaceful possession and collection of tithes, assigned to him and to the curate, be maintained. However, the archiepiscopal tribunal rendered a judgment, in which it decided, "that it did not belong, nor does it belong, to the Reverend Joseph Ripari, curate of the aforementioned church of Saint Mary of Corva, any maintenance, in the asserted possession of the right to demand tithes." And it imposed perpetual silence on this matter. Furthermore, according to what is said, a separate section of the same judgment...

[*Latin ed. p. 404*]

404. In Fermo, it was decided that "the chapter of the illustrious collegiate church of St. Elpidius should hold and possess the right to bury and inter all the deceased, both within the same town and within the boundaries of the entire territory." After the issuance of this decree, a certain agreement was reached on March 17, 1773, between the chapter of St. Elpidius and the curate of St. Mary of Corva, in which the curate agreed not only to relinquish the right to collect tithes and to bury, but also to grant dispensations for the fulfillment of the Paschal precept, and in all respects, as the curate of another church, the Holy Angels, had done. It is noteworthy that while this agreement was ratified on March 17, 1773, in the same year, on December 22, the curacy of St. Mary of Corva became vacant due to the resignation of Joseph Ripari, and the Archbishop who was then in Urba, Parracianus, after due deliberation, appointed a new curate in accordance with the terms of the founding bull. However, whatever may have transpired during this three-year period following the aforementioned agreement between the chapter of St. Elpidius and the curate of St. Mary of Corva, the question again arose between the chapter and the curate of the Holy Angels. As the church and the attached rectory were in a state of disrepair, it began to be debated whose expense it would be to restore both. The case was again brought before the Sacred Congregation of the Council, which on September 7, 1776, issued a decree stating that the restoration,

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and if necessary, the reconstruction, of both the church and the rectory belonged to the chapter. The following questions were then raised: I. Does the provision of other sums of 5 bushels of wheat, oil for the lamp, and the maintenance of the church and buildings for the curate of the Holy Angels pertain to the provision of sums of 10 bushels of wheat by the Society of St. Mary of Mercy in this case? II. From whom are these aforementioned obligations to be collected, and consigned to the curate of said church in this case?

[*Latin ed. p. 405*]

FIRMANA, "pidii, 405 I I I. In the year, and so that the inhabitants and cultivators of the territory of the church of the Most Holy Custodians, of said place, may be obligated to fulfill said obligations, and may be obligated to pay tithes to the mother church in the case. I V. In the year, and to whom pertains the rebuilding of the church and buildings for the chaplain curate of the Most Holy Custodians of the Angels? The Sacred Congregation of Councils responded: To I. The provision of wax and oil for the lamp pertains to the parishioners; the maintenance of the parochial buildings and the church pertains to the collegiate church of St. Elpidius. To II. Wheat and oil must be demanded from the syndics of the aforementioned place, Arella, according to a distribution to be approved by the Most Reverend Archbishop, and furthermore. To III. Affirmative, according to the form of the resolution of the first doubt. To IV. This pertains to the chapter of St. Elpidius. After five years had elapsed since the issuance of said sentence, and the chapter did not at all take care to execute it; then the chaplain curate again had recourse to the Sacred Congregation, which, having heard the prior information of the Archbishop of Fermo, referred the request of the chaplain curate to the aforementioned Archbishop in writing, dated May 12, 1781. "Let it be shown to the capitulars, and let the Archbishop proceed according to law against them, for the diligent repair of the church and parochial buildings." And the Archbishop, carrying out the orders of the Sacred Congregation, diligently set a determined period of time for the restoration of the church and parochial buildings. He also endeavored to have other agreements made between the parties in dispute, which was done through a public instrument on June 26, 1781; and although until then the question had been only between the chapter and the chaplain curate of the Most Holy Custodians of the Angels, it was nevertheless decided to also call the chaplain curate of St. Mary of Corva to the agreement. Therefore, by common consent, it was established that the chapter would have a firm and permanent obligation regarding the material conservation of the houses and churches of the Most Holy Virgin Mary of Corva; and also, for one

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time only, the chapter was to be obligated to provide for both.

[*Latin ed. p. 406*]

406 In Fermo, certain sacred furnishings were given to the chaplain, and henceforth, the chaplain himself was to provide for and maintain these sacred furnishings. The chapter was perpetually obligated to provide an annual subsidy of 75 to each of the two chaplains, a burden that remained firm and perpetual. This was imposed by the Bishop and remained in perpetual effect. Subsequently, it appears that these matters remained quiet for a long time, or at least, it is not certain that they were contested for the following 64 years. Meanwhile, two new parishes were established in the same territory, entirely independent of the chapter of S. Elpidio, "but with the favor of the same chapter remaining intact, and with the unchangeable right to decline." One of these was established on May 1, 1823, and was assigned the entire coastal zone extending from the Chienti River to Tennam, which previously belonged to the jurisdiction of the two chaplaincies of S. Mariae and SS. Angelorum. This area, although narrow, was over 8 kilometers long, and in its midst was a port where a church, surrounded by numerous dwellings, had existed for a long time. The other parish was established on January 30, 1826, in the region called Mostrapiede, to the north of the town of S. Elpidio, in a more remote location. Therefore, at that time, and even now, the entire Elpidian region was divided in such a way that the entire coastal zone belonged to the parish of Portus; then followed the two curacies of SS. Angelorum Custodum and S. Mariae de Corva, one to the north and one to the south; finally, further inland were the two other parishes of Mostrapiede and S. Elpidio, the former also to the north, and the latter to the south. With all these facts regarding the origin and nature of the controversy that is now being discussed, it is necessary to proceed quickly to explain the matter. Already in the year 1845, the two chaplains of S. Mariae and SS. Angelorum petitioned the Ordinary, because, according to what has been stated above, they lacked the legal right to baptize, to bury, to distribute marriage licenses, and to collect tithes. But in the year 1884, the priest of Cabiti, the chaplain of S. Mariae,

[*Latin ed. p. 407*]

FIRMANA, considering that the deprivation of such rights has always been the cause of numerous disturbances, which are increasing daily, appealed to the Holy See, requesting that these rights be restored or recognized, and transmitting further documents in favor of its intentions. Immediately, another chaplain, Mallio, joined this petition on behalf of the parish of the Angels. Meanwhile, when consulted about the matter, the Archbishop responded: "After careful consideration of the legal question, it cannot be denied that several of the damages and inconveniences lamented by the parish priest are confirmed. Therefore, it would certainly be desirable to

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seek some remedy or solution for these issues. Indeed, the revenues of the parish of Saint Mary of Corva are so meager that they are not sufficient to support a livelihood; as a result, after a long period of vacancy, two parish priests resigned within a short interval. Therefore, if not by law, at least by grace, some participation in the tithes could be granted to the parish priest; at the very least, a portion of the tithes could be assigned to the parish priest during canonical vacancies, which would increase the resources available. However, the Chapter opposed this in every way. Therefore, since two parish priests, citing their poverty, had petitioned for economic assistance, the documents gathered from various sources were transmitted to the Consultors, so that they might express their opinion on this matter. After considering everything, the following conclusions were reached:

"1. Corollary: The Collegiate Church of Saint Elpidius retains the true and proper rights of "matriculation" with respect to the chaplaincy of Saint Mary of Corva, and also with respect to the other parish of the Angels.

"2. Corollary: The Collegiate Church of Saint Elpidius, given the current circumstances, is obligated and must not only provide for the maintenance of both churches and the parochial buildings, as already determined by the Sacred Congregation of Councils; but it is also obligated and must provide for the needs of both chaplains for their sustenance, to the extent that it is necessary and in a measure to be determined by the Ordinary."

And after considering other matters, both legal and factual, the following vote was passed: "Conclusion: In order to provide assistance..."

[*Latin ed. p. 408*]

408 FIRMANA. Concerning the ritual necessities of the faithful people inhabiting the territory designated since the year 1745, it seems most necessary and highly advantageous that the chapels of Saint Mary of Corva and of the Holy Angels be granted all parochial rights, including the baptismal font. And since the same reasons apply to the other chapel of the Holy Angels, it seems fitting that these also be granted all parochial rights, including the baptismal font.

And below: "It should not be omitted that, in the Conclusions in which I expressed my subordinate opinion regarding the great suitability of granting both chapels all parochial rights, and consequently of establishing them as true parishes, independent of the mother church, no mention is made of the right of tithes, and this because the aforementioned Congregation implicitly recognized that it remained with the mother church; and it imposed upon the mother church the burden of maintaining the churches of Saint Mary of Corva and of the Holy Angels, and their respective parochial buildings, because even the Archbishop of Fermo, in the erection of another parish, the parish of the Annunciation, which took place in the year 1828, left the right of tithes to the mother church. Therefore, it seems that there are special reasons that suggest that the mother church should maintain

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its possession of the right that it has held for a long time. Therefore, there does not seem to be a serious reason why this right should be reserved for the mother church. However, as long as this right remains with the mother church, it is fitting that the burden also remain, namely, the maintenance of the churches and parochial buildings. And since the honest support of the parish priest of Saint Mary of Corva may not be sufficient from the emoluments that can arise from the exercise of parochial rights, burials, and baptisms, beyond the goods and revenues that he already possesses from the original institution, it seems to me that the mother church is obligated to provide what is lacking."

[*Latin ed. p. 409*]

FIRMANA 409. Disputation on Synodal Matters. DEFENSE OF THE CHAPTER. Those who have examined the parts of this Chapter have deemed it best to publish certain documents separately, and to present a written statement, in which they warn that the aforementioned Chapter enjoys, by its very foundation, the rights of baptizing, burying, collecting tithes, and of distributing Paschal vestments throughout the entire Elpidian territory. Furthermore, they assert that any division [of the territory] is a most odious thing; and therefore, it must only be admitted out of necessity, and that too, in matters that are necessary, for which it was instituted: but they maintain that the Chapter must be preserved in the aforementioned rights, since the necessity of division does not apply to this matter. And with regard to the right to collect tithes, they state that, even in the fullest division, the tithes are not included, nor do they pass to the newly erected church, unless they are expressly and individually applied to it through the ministry of the Ordinary, according to established terms, as Ferraris states (v. Dismembratio, no. 27), Reiffenstuel (tit. De decimis, no. 104), and others, along with six hundred decisions of the Sacred Rota, and also with an authentic declaration of the Sacred Congregation, which, in the year 1617, as Fagnano testifies in chapter "Cum contingit, De decimis, no. 52," while the secretary himself was performing his duties, "after a careful discussion, decided that the tithes belonging to the mother church do not, by their own right, pass to the newly erected parochial church, but remain with the mother church, unless the Bishop assigns them to the new parish priest, according to the decree of the Council, which is in session 21, chapter 4, concerning reform." Moreover, in the Bull by which the Archbishop of Fermo erected the chapel of Saint Mary of Corva, not a single word is mentioned about tithes; on the contrary, it is inferred from the same document that a certain portion, which is appropriate, if not abundant, as will be shown below, is assigned for the expenses of divine worship and the support of the chaplain. The aforementioned is what the

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speaker maintains should be held as a prior principle.

[*Latin ed. p. 410*]

410. FERMO. Concerning the right of burial, for the sake of equality, this is linked to the right of baptizing, which was expressly reserved to the parish church. The Orator of the Chapter also vigorously argued, based on documents, that the right to distribute Paschal garments was also fully established. He then recalled all that had previously been mentioned, namely the judgment of the Sacred Congregation of 1759, by which the division of the two parishes was indeed sanctioned; but, as the Orator asserted, this was done with limitations, namely those which the Ordinary had intended to impose regarding the rights of tithes, burial, baptizing, and the distribution of Paschal garments. Indeed, the Archbishop expressly declared, "that he had reserved for the same collegiate church, in addition to the aforementioned right of baptizing, also the rights of tithes and burial." He then recalled the judgment of the Curia of Fermo of March 1, 1722, against the chaplain of Saint Mary of Corva, which was upheld as a final judgment due to the lack of an appeal, and also the subsequent solemn agreement. He referred to the judgment of 1776, and another agreement of 1781, and to the Bull of Clement XIII, which confirmed the agreement; from all of which, he maintained, the rights of the Chapter were invincibly proven and defended. These rights of the Chapter were also recognized by the Most Reverend Archbishop Brancadoro, who, when establishing a new parish of the Annunciation by Bull on May 1, 1823, wished the unforgettable right of the Chapter to collect tithes to remain intact, although he did not consider it appropriate to reserve for the same Chapter the rights of baptizing and burial "as was provided in the establishment of rural parishes, namely one under the invocation of the Most Holy Angels and the other under the invocation of Saint Mary of Corva." Finally, the Most Reverend Archbishop De Angelis described the true condition of both chaplaincies and stated that he did not consider either chaplaincy to be among the parishes. He then pointed out that it was useless to distort the text of the Bull establishing the chaplaincy of Saint Mary of Corva to give it a different meaning.

[*Latin ed. p. 411*]

FIRMANA, the advocate argues, presents a difficulty that is neither new nor one that has ever yielded positive results, as is evident from the aforementioned statements, which the advocate repeats here in order to clarify the points presented before the Sacred Congregation. Having brought matters to this point, the defender of the chapter attempts to address the principal objection raised, lest he appear to be deficient in his defense, and he claims that the opposing party has found a stronger argument. He begins by stating that the objection regarding the inadequacy of the provision is not appropriate. For it is well known that, according to the well-known

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provisions of the Council of Trent, session 6, chapter 2; session 7, chapters 5 and 7; session 24, chapter 18; session 25, chapters 16, 4, and 6; and session 21, chapters 4 and 6, it is within the authority of the Ordinary to assign a suitable portion. And that, once such a portion has been assigned, it should be presumed to be sufficient, so that there is no further need for a new assignment or increase, nor for a decrease. Ferraris, *Congruae*, nos. 25-30, states: "A provision granted by the Bishop is presumed to be sufficient, unless it is proven to be insufficient; Rota, part 9, volume 1, decision 222, no. 15, and part 15, decision 347, no. 4... Therefore, a provision once granted should not be further assigned or increased, Rota, part 2, decision 239, no. 1, and part 13, decision 48, no. 2; nor can it be further decreased, Rota, part 18, volume 1, decision 81, no. 50." Furthermore, Pope Pius V declared in the Constitution *Ad exequendum*, that the Ordinary must determine the amount, "so that he does not assign more than one hundred, nor less than fifty, annual scudi, including even uncertain revenues and other customary receipts, to the parish." Several resolutions of the Sacred Congregation are consistent with this decree, including the most recent one, the Erection of the Parish of Hierace, March 27, 1886, in which, to those requesting the erection of a new parish in the place called Gioiosa Marina, with a provision of 340 scudi, the Most Reverend Fathers responded: "Since a prior obligation has been issued by the benefactors in a legally valid form, to pay a supplement to the provision up to 500 scudi, as soon as the parish..."

[*Latin ed. p. 412*]

412. The parish of Fiumana having been established, it is possible for the parish priest to proceed with the division and the erection of a new parish. "Indeed," the defender of the chapter sought to demonstrate, "a suitable portion, which the chaplain of Catini currently serves, by far exceeds the annual sum of 500 livres, as sanctioned by the Bull of erection." Furthermore, the advocate maintains that the objections raised concerning the right of baptizing being reserved to the mother church are frivolous. For, since this right has been expressly reserved to the mother church in the very Bull of erection of the chapel of S. Maria de Corva, it is clear that there was no need to grant the same right to that chapel. But if it was not necessary then, it can be said that it is much less necessary now: for the roads are now good, whereas they were very bad in the past. Regarding the objection presented as evidence, which states that the chapel should have baptized 60 infants from the year 1822 to the year 1845, that is, less than three infants in each year, the advocate adds that it reveals nothing inconvenient and proves nothing, since it happened not because of the journey to the mother church, but for a completely different reason, which is often and everywhere verified. Furthermore, the inconveniences complained of concerning the right of burial by the chaplain of Catini are, it is judged, sufficiently and abundantly addressed by the testimony of a priest, who testifies to the very

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modest expenses with which burials are conducted to the mother church and are carried out with great dignity. Moreover, the burials of the poor are conducted with the same generosity and dignity, as the same priest testifies. These things, however, cannot be provided with the same decency in the chapel of S. Maria de Corva, or certainly not without a tripling of expenses. Finally, encompassing all of the aforementioned rights, the advocate says that these should be considered, according to what is reported by Cardinal De Luca in the Annotations to the Council of Trent, Disc.

[*Latin ed. p. 413*]

FIRMANA, 4th of July, 16, number 2. This concerns the safeguarding of the rights pertaining to the collegiate and mother church, which are of great importance. If one considers further that the inhabitants of the territory of Elpidia are accustomed to engaging in continuous business dealings with the inhabitants of the city, it is truly not to be considered a small difficulty to request [something], as was the case in Feretrano: August 4, 1883, although it is stated that the distance is equal to seven kilometers, and that the inhabitants of S. Anthimi "cannot reach the town and the parochial church of S. Marini except by three paths that go along the side of the cliff and through crevices." And this must be urged all the more, firstly, because there is no Bishop of Firmana who has perceived the great inconvenience of the journey, or who has considered it sufficient to provide for it through the institution of chaplains; secondly, because, in fact, there are more convenient roads to the mother church than to the two dependent parishes.

DEFENSE OF THE TWO PARISHES. In favor of these [parishes], it was primarily the intention of the Council of Trent, session 21, chapter 4, that Bishops "in all parochial or baptismal churches, in which the people are so numerous that one pastor cannot suffice to administer the ecclesiastical sacraments," should compel the pastors "to add to themselves as many priests as are sufficient." But "in those churches, in which, because of the distance of the place or the difficulty, the parishioners cannot easily access the sacraments and divine services, new parishes may be established, even against the will of the pastors..." And it was added: "To those priests who will be assigned to newly erected churches, a suitable portion shall be assigned, at the discretion of the Bishop, from the fruits pertaining to the mother church in any way." Furthermore, the dismemberment, of which we speak here, is that which is considered odious in law, because the very benefit, that is, the provision from which the priest is sustained, is diminished, which is by no means pleasing. But a dismemberment which does not affect the endowment of the benefit, and...

[*Latin ed. p. 414*]

414. Fermo divides and limits territorial jurisdiction only for the greater

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convenience of the subjects; it may indeed offend the vanity of this or that area, but it truly does not harm the benefit to which it should mostly be granted, because it reduces the burdens of the benefice, or, at least ordinarily, unless in a very small part, its revenues; nor does it detract from the church itself, because its adornments can easily be provided for through its endowment, but rather it can greatly contribute to the good of souls, provided that it is equitable, reasonable, and not excessive. Therefore, when considering the division of a benefice, absolute possibility and the true necessity of the people must be justly considered; on the other hand, when considering the division of territorial jurisdiction, whenever a provision is made for a new parish, without harming the old parish, the congruity and utility of the division should be considered above all else, so that nothing is taken away from those things which are well established. Council of Trent, Session 25, Chapter 5, on Reform. In general, having said these things to establish what seems to be retained in the matter of the aversion to division, if we apply this to the case in question, it is clearly evident that: 1. the question is not about the division of territory; for a territorial division, if legitimately made from the beginning and approved by the Sacred Congregation, as has been said, has never been revoked, although the rights of the rector or of the chaplains may have been diminished subsequently by agreement of the parties and by the pontifical sanction of Clement XIII; 2. nor is the principal matter about the division of the benefice, but only subsidiarily; for the two rectors are promoting the question about tithes subordinately, and that especially for the reason that one of them is entirely in need of necessities for life, while the other is enriched for a somewhat better reason. Therefore, 3. the point of contention is primarily about spiritual rights, such as baptizing, burying, and distributing Paschal blessings, rights which the Archpriest and the chapter of Vico Equense, under this or another title, which we need not now investigate, certainly possess, and to which they strive to retain at all costs; these rights are...

[*Latin ed. p. 415*]

FIRMANA 415: Those who are to be assigned to it maintain that it is more fitting for them. Therefore, the principal question is that of the division of jurisdiction. Furthermore, to grant this division, not only does the reason of convenience and suitability seem to suffice, as mentioned above, but also a grave reason of necessity. Indeed, the mother church is located 7.333 kilometers from the church of Saint Mary of Corva, and 5.700 kilometers from the church of the Holy Angels; and since these two churches are located almost in the center of their district, it follows that the inhabitants who live at the extreme ends of the territory, beyond the parish churches and near the sea, must travel 8 kilometers or more to reach the collegiate church. It must also be noted that the region is exposed to marine winds and rains, and is moreover interspersed with hills and rivers,

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making travel more difficult for those who make the journey. Although it is said that the municipality has paved more roads than before, and therefore access to the town is easier now than it was, this does not seem to resolve the issue, for the distance remains great, and is as burdensome in winter and summer as it was before; moreover, many families are located far from the roads, and therefore are little helped by the new roads; and finally, the population has increased, and therefore the inconvenience that was once felt by a few is now felt by many, and causes greater complaints. It is indeed not doubted that distance can be a legitimate cause for division, for this is expressly stated in the aforementioned Tridentine decree, and in the chapter concerning hearings, where, not only the territory, but also the division of the parish benefice itself is approved, because "the region is so far from the parish church that, in winter when the rains flood, the parishioners cannot reach it without great difficulty." However, the distance required for this is not defined in law, and it is left to the judge's discretion to determine it; nevertheless, in the case of Feretrano, which is presented in contrast, the distance of two or three thousand paces is considered sufficient.

[*Latin ed. p. 416*]

416 It has been deemed sufficient in Fermo. However, if this was not the case in the aforementioned instance of Feretrana, it occurred because there was no endowment provided for the new parish, and the revenues of the old benefice were prohibited from being shared. Furthermore, in this instance, the distance is not two or three, but four or five miles. Moreover, the two most recent parishes of Portus and Mostrapiede were separated due to very serious inconveniences that the inhabitants complained of while they were united. Thus, the Ordinary spoke in the decree of the erection of one of these parishes: "Although, meanwhile, not only the spiritual benefit, but also an absolute necessity, has been expressed and demonstrated in numerous ways by the inhabitants of the coastal area of S. Elpidio towards the sea, for the establishment of a new parish, according to the laws and conditions which we have proposed in this chapter, therefore, notwithstanding the unreasonable dissent of the same chapter, having seen the instrument of endowment for the erection of the new parish, and having seen the consent of the neighboring pastors, we erect a new parish." Furthermore, the parish of Mostrapiede is located 5.723 kilometers from the collegiate church; and the church at Portus is approximately eight kilometers away, according to the measurements made by experts and presented by the pastors. If such distances were sufficient for the separation, then parishes that are equally or even greater distances apart, and located in the same region, do not seem to be considered insufficient. Indeed, they have been declared to be perfectly sufficient in the decrees of the Archbishop of Borgia, in which two curacies were erected, but which were judged by the Sacred Congregation

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itself on December 15, 1759. If, from the beginning, a baptismal font was not granted to the two new parishes, and if, subsequently, weary of a long dispute, the rural curates were not able to resist the powerful chapter of the town for much longer, and if they ceded certain rights, it is easy to find a simple explanation, and it should not present much difficulty: provided that present and real necessities are taken into consideration. Moreover, it must be considered that spiritual jurisdiction is not private property, but the power of a superior authority.

[*Latin ed. p. 417*]

In FIRMANA, a concession was granted for the benefit of the faithful, which, although legitimately levied, and recognized by any judgments and agreements, can nevertheless be revoked or regulated by the superior authority, whenever the public good, for whose sake it was established, requires it. For the salvation of souls is the supreme law. Therefore, the matter remains to be considered whether either of the demands for transferring spiritual rights from the mother church to the filial churches should be granted. This, in general, could be inferred from what has been said so far regarding the reasons for the distinction; but it seems more clearly demonstrated by considering certain specific rights. And first, concerning the font of baptism. Formerly, baptismal churches themselves were cathedrals; but with the establishment of parishes around the 11th century, this right also began to be granted to them; so that today, although absolute necessity does not require that a parish renounce its baptistery, it is nevertheless considered highly appropriate and natural. Indeed, it is entirely necessary that each pastor know the sheep who are incorporated into the flock through the sacrament of baptism and are received into the bosom of the Church, as the Rota in Rome, in the matter of baptism, on January 12, 1733, after hearing the arguments of Samminiato and the Sacred Congregation of Councils, decided in the case of Fabrianen, on November 14, 1733. But in this matter, not only is the establishment of a font expedient; it seems absolutely necessary, as can be gathered from the testimonies of midwives and physicians. Midwives of that area assert: that many infants had to be baptized at home, considering it imprudent to bring them to the mother church, due to the long journey, without baptism; that many brought them to the nearest church so that they would not perish on the journey, as has happened several times; and that many, indeed, perished from the same cause of the long journey, after having received baptism a few days earlier. Physicians of that place say: that boys are exposed to various illnesses when they are transported on long journeys; and that the notable infant mortality in that territory is due to the cold with which they are afflicted.

[*Latin ed. p. 418*]

418 In Fermo, the children are afflicted on the way, while being taken to

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the Church for baptism. From these inconveniences, many complaints arise from the parents, who come to this because of the reasons that they wish to have their children baptized. Hence, the defender says, omitting other complaints of the fathers of families, it seems more prudent to conclude with the very words of the consultant, namely, that the eternal salvation of one infant is worth more than the privileges and preeminences that the collegiate church seeks to maintain.

He also omits what the consultant himself mentions, namely, that some years ago, a lamentable event occurred in Rome, in which an infant, who was being taken to the Basilica of St. Peter from the suburban parish of the Most Holy Rosary, died on the way before baptism. Immediately, Pope Pius IX ordered that a baptismal font be erected not only in that parish, but also in two other suburban parishes, derogating from the important rights and privileges of the Basilica. And rightly so; for in order to preserve the preeminences of some church, difficulties are not created for the faithful in those things that are necessary for salvation; rather, the honor of the churches should be converted to the benefit of souls.

As for funerals, besides the fact that it is not clear from the beginning of the division whether the same reservation applies, it seems that the reservation of funerals to the mother church is harmful to the inhabitants and, moreover, deprives the already poor and struggling pastors of a small source of income. Finally, the reason for celebrating the Paschal communion, and the necessity of obtaining certificates of the sacrament, besides conferring no benefit, but only an inconvenience on the parish, seems to be contrary to the wise principle promulgated by Trent, chapter 9, session 14: "For it has been most fittingly decreed that dioceses and parishes, and proper pastors for each flock, and pastors of inferior churches, who should take care of their own sheep, so that the order of the Church may not be confused... not without serious harm to those who are subject." Therefore, in another place, that is, chapter 13, session 24, the same Trent decreed: "In those cities also... "

[*Latin ed. p. 419*]

In FIRMANA, and in places where parochial churches do not have clearly defined boundaries, and where their pastors do not have a specific flock to govern, but administer the sacraments to those who request them, the Holy Synod commands the Bishops, for the safer salvation of the souls entrusted to them, to assign a distinct population to certain and proper parishes, and to assign to each a permanent and particular pastor, who may know them, and from whom alone the sacraments may be lawfully received.

This seems to be highly relevant to the case; for two pastors state that, due to the unusual practice in this matter, it is often uncertain, or hidden, who has fulfilled the pastoral duty.

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Regarding the matter of tithes, a few observations are made. For although tithes can be assigned to new parishes, as abundantly demonstrated by Ferraris in *De decimis*, article 2, number 17 and following, with the addition of the Council of Trent; although, in general, it seems fitting, "since the collection of tithes pertains by common right to the parochial churches," as expressed in chapter 29 of *De decimis*, and that they should be paid, especially to the pastor in recognition of his ministry and to support his livelihood; although, finally, this division of tithes might have been considered just, considering the necessity of founding new parishes, and of endowing them according to the aforementioned chapter 4, session 21 of the Council of Trent, even through the division of the endowment of an older parochial benefice, nevertheless, this was not done in this case.

Whether it would have been beneficial to do this now, either in part or in whole, was left to the judgment of the Fathers, considering the poverty of both new parishes. Both pastors, and especially that of Saint Mary of Corva, demonstrate, with the reasons they present, and with the expenses incurred, that they are burdened by great poverty, although there are other reasons that they cite. But, without excessive trust in these reasons, which are often fabricated with deceptive art, and which are not always fully explored in this matter, the facts that the Archbishop mentions to prove the poverty, especially of the benefice of Saint Mary, must be considered.

[*Latin ed. p. 420*]

420 In Fermo. Quod, cum certa quantitas una vice constituta, non debeat amplius assignari et aueri, sicut alii dicunt, verum est, si illa certa quantitas, ab initio stabilita, sit sufficienter; sed si appareat quod illa dote, ab initio assignata, non sit sufficienter, certe est necesse eam augere, quod idem Ferraris v. Congrua n. 30 seqq. defendit, ubi ipse auctor ita prosequitur: « In tali casu, si, scilicet, certa quantitas novae paroeciae assignata probetur insufficienter, aut si paupertas postea superveniret, parochus non potest nisi ad supplementum agere, et Episcopus debet prius considerare de reditu ecclesiae, si sufficiat, et deinde, si necesse sit, populum ad subsidium coarguere, vel alio modo providere; Rotap. 4, t. i, dec. 595, num. 1. S. C. E E. et R R. in Interamnen. 27 Martii 1601 etc. » His notatis in utramque partem, dirimenda proposita fuerunt Dubia I. An Capitulum S. Elpidii, concernens ius baptizandi, funerandi, decimandi, nec non texeras paschales distribuendi, relate ad Capellanías curatas S. M. de Corva, et SS. Angelorum in casu. Et quatenus affirmative, quoad ius decimandi. I I. An, et quomodo providendum sit in casu. RESOLUTIO. Sacra O. Concilii, re cognita sub die 15 Septembris 1888, censuit respondere: Ad I. Quoad decimas, affirmative, distracta tamen et attributa utrique paroeciae filiali, utraque enim vere paroecia est, cum omnibus iuribus parochialibus, et quota decimarum respectivi territorii, quae prudenti Archiepiscopi iudicio satis esse queat ad

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complementum utriusque congruae, intuitu non solum honestae sustentationis parochi, sed etiam manutentionis Ecclesiae et domus parochialis; computatis tamen in congrua incertis utriusque stolae, et sublata quavis ulteriori matricis obligatione in futurum. Quo vero ad reliqua, negative et amplius. Ad II. Provisum in primo.

[*Latin ed. p. 421*]

FIRMANA 421 From which [principles] are gathered: I. It is to be commanded that the Bishop of Trent, for the safer salvation of the souls entrusted to him, divide the people into certain and proper parishes, assigning to each a perpetual and particular pastor, from whom alone the sacraments may lawfully be received. II. Hence, it is most fitting that parishes be distinguished, and that pastors be given to each, endowed with all parochial rights, who may have care of their respective flocks, so that those subject to them may readily obtain the sacraments and other divine things without serious inconvenience. III. Since the salvation of souls is the supreme law, therefore, the present and real needs of the people are to be attended to, and it must be noted that spiritual jurisdiction is not a private possession, but a concession of superior authority, granted for the good of the faithful; and that it can be withdrawn or regulated by the superior authority, notwithstanding any judgments or conventions by which it may have been established, whenever the public good requires it. IV. The division of parishes and the erection of new ones can occur whenever the good of souls demands it, or whenever it is demonstrated that there are serious reasons for carrying it out (1). V. It is easily perceived that there are serious reasons for the division in the territory and for the erection of two parishes, with all their own rights, and independently of the mother church, from the inconveniences to which those subject to them are exposed, so that they must seek the mother church instead of their own parishes (1). (1) Regarding the division of parishes, see Vol. I, pages 520 and 543, Vol. III, 396, appendix on the consent of the pastors and the people in the division of parishes. Vol. XII, 287, Vol. XIII, 60 and 293. In the same volume XIII, 289, see Appendix VI on the power of the Ordinaries, and on the jurisprudence regarding the division of parishes. Also, see Vol. XV, 569.

[*Latin ed. p. 422*]

422 SECCOVIEN. OR ORDINISS. BENEDICTI UNIONIS, September 15, 1888. Session 24, Chapter 13, Concerning Reforms. SUMMARY OF FACTS. The Abbot of the monastery of Seccoviensis, belonging to the Beuron Congregation, O.S.B., presented the following to the Holy See in a suppliant letter, and implored: "The parish of Seccoviensis, located in the diocese of Seccoviensis, in Upper Styria, was established in the year 1143, under the title of Saint James the Apostle, by regular canons living according to the

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rule of Saint Augustine, who had come from the church of Saint Mary in the valley of Feistricensis, and was possessed and administered by them until the year 1782; in that year, the aforementioned Convent, adorned with the rights and privileges of a cathedral chapter, was dispersed by the Emperor Joseph II. A new Greek (Gratz) cathedral church was created, and the ancient parish church of Saint James was extinguished; the ancient cathedral church was changed into a parish church under the title of the Blessed Virgin Mary, and was in the possession and under the care of secular priests. "In the year 1883, several monks of the Beuron Congregation, called by the Most Reverend Lord Bishop of Seccoviensis, the Most Excellent Prince Johann Zwerger, entered the old and abandoned monastery, and established a priory there, which, with the consent of their Most Reverend Majesty, on July 3, 1887, was raised to the status of an Abbey of the Beuron Congregation by the Holiness. "In the year following the erection of the aforementioned priory, the parish of Seccoviensis was also entrusted to the Benedictine Fathers of the monastery of Seccoviensis by the Most Reverend Lord Bishop, because the parish priest, who was then administering it, had requested to be relieved of his duties due to advanced age. For spiritual matters of the parish, up to now, two Benedictine Fathers have provided; for this care, the monastery receives temporal benefits, which are partly derived from the parish funds. But since..."

[*Latin ed. p. 423*]

SECTION. OR THE ORDER OF ST. BENEDICT 423. The monastery of Seccovium, having attained a firm and stable condition under the Abbey, it seems opportune that the relationship between the monastery and the parish, which had previously existed in a provisional state, should now pass into a stable and fixed order. To accomplish this, the aforementioned Abbot believes it is best, with the consent of the Most Reverend Lord Bishop, if the parish of Seccovium were fully incorporated into the monastery of Seccovium. "Therefore, the aforementioned Abbot most humbly requests Your Holiness, graciously approving the prayers of the Orator, to grant that the aforementioned parish be incorporated into the Abbey of Seccovium with full rights, that is, with regard to office and benefit, and that the authority to complete this incorporation, as far as it pertains to him, be granted to the Reverend Lord John Zwerger, the Bishop appointed." The Bishop, transmitting these requests, affirms his support for the supplication for the following reasons, which he enumerates as follows: "1° The parish of Seccovium was founded by regular canons, who administered the parish until the year 1782, when the monastery was abolished by the Government. Therefore, the requested incorporation would restore the original state." "2° The Basilica of Seccovium is now, in fact, a parochial church. It is fitting that the regular priests who perform divine offices should also care for the souls in the parish." "3° The desired

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incorporation would eliminate the differences that could easily arise from the beginning between secular and regular priests, if they were to perform different duties in the same church." "4° The requested incorporation would also be beneficial to the Bishop of Seccovium; for the diocese has suffered for many years from a considerable lack of secular priests." "5° Finally, since the year 1884, I have provisionally assigned the care of the parish to the priests of the monastery. I testify that they have commendably fulfilled the duties assigned to them, and with all salutary effect."

[*Latin ed. p. 424*]

424. SECTION. OR THE ORDER OF SAINT BENEDICT. Finally, Canon Harlon, who is the patron of the parish church of Seccovi, sends a letter in which he declares that he consents to the requested union being carried out. The Synopsis Tridentina, in Session 24, Chapter 12, concerning reforms, warns that "in any unions, whether those mentioned above or others, parish churches should not be united with monasteries, or with abbeys, or with any ecclesiastical dignities, or with the cathedral church." Indeed, the union of a parish church is so forbidden by the Council that any diversion, even a small one, of the parish's revenues to a monastery or to other pious causes is prohibited, as is reported in S. C. C. Garcías, Chapter 2, Part 12, number 87, and Barbosa, Allegation 66, number 30. And rightly so, for such unions are considered odious in law, and are treated almost as alienations. De Luca, De parochus, Chapter 35, number 6; Reifenstuel, ad tit. 5, lib. 3, number 68. If such a union is permissible in any case, it should be all the more so in the case of a perfect union, that is, concerning the benefit and office, or the extinctive and transmissive titles, which are in question here. Therefore, the Sacred Congregation sometimes, even when recognizing a just cause for the union, has not wished to approve of a perfect union, but has conceded only what was the least possible, as in the case of Cracovia, on June 30, 1740, and in Santiago de Compostela, on September 20, 1692: in the former case, it permitted the parish to be united with a college of the Society of Jesus which was lacking personnel, and in the latter case, with a convent of Dominican Fathers for a similar reason, but only on the condition that a permanent secular vicar be appointed to administer the parish. It may even be said that, in the case we are considering, there is more of a restoration to the former state, which was violently disturbed by the imperial decree of Joseph II, than there is a union. For, whatever may be the case with the former state of the church of Saint James, and with the illegitimate manner of proceeding of Joseph II, concerning which we do not inquire and for which we lack the elements of judgment; it seems that...

[*Latin ed. p. 425*]

SECTION VI. OR THE ORDER OF SAINT BENEDICT 425. We must con-

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sider whether the Holy See intervened in this matter. For, upon carefully reading the humble account of the monks, although it is somewhat obscure in this regard, it appears that the church of Saint James was formerly held by the Augustinians, and was adorned with cathedral rights and privileges; that Joseph II diverted the monastery; that a Greek established the episcopal see; and that, consequently, the cathedral church of Saint James changed its title and status, becoming a parochial church under the title of the Blessed Virgin Mary Assumed into Heaven. Furthermore, if these things are so, it cannot be doubted that the approval of the Holy See was necessary in the conversion of the church of Saint James to this new and lower condition; for without it, cathedrals cannot be destroyed and new ones established. Therefore, it also seems that this new and lower condition of the church of Saint James is legitimate.

Given this situation, it seems unnecessary to inquire about the ancient status of the church; but it must be considered whether there are just causes by which the law can be legitimately derogated from, and whether that which is done is not odious and almost like an alienation. The fact that unions can be made for great and evident benefit is a doctrine that needs no further illustration, and it is clear from chapter 33 of *De praeb.*, as well as from the aforementioned chapter 13 of the Council of Trent, session 24. I also omit the reminder that the condition required for making a legitimate union is the consent of the chapter, as the text expressly states in *De alienatione*. However, this rule applies to unions made by Bishops, and not in all cases, e.g., if there is a legitimate custom somewhere of making such a union without the required consent of the chapter, as Ferraris states in *Tractatus de unione*, nos. 39 and following. Therefore, it does not seem to be urgent in this matter; because we are dealing with a privileged union, which can only be made by the Holy See. Rather, the necessity of consulting the cathedral chapter might be inferred from another chapter of the Council of Trent, session 7, on reform, chapter 6, where it is stated that unions should not be made without force, "unless they are made according to law."

[*Latin ed. p. 426*]

426 SECCOVIEN. OR. S. BENEDICTI. "Si, ex causis iis quae loco Ordinario praesentantur, et postquam testes vocati fuerint, comprobatur quod res ita factae sunt, ut dicendum sit." Sed dubitari poterat, num capitulo aliquid attinet, ut haec antiqua cathedralis ecclesia monasterio coniungatur. Sed cum sedes translata sit, et ecclesia S. Iacobi ad simplicem parochialem redacta invenitur, credi verisimiliter potest, nullum speciale interesse ad ipsam capitulum posse habere. Hisce perspexis, propositum fuit solvendum dubium, si petita unio concedi possit in hoc casu. RESOLUTIO. Sacra Congregatio, recognita sub die 15 Septembris 1888, censuit respondere: Affirmative, facto verbo cum SSmo. EX QUIBUS

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COLLIGITUR. I. Etsi uniones beneficiorum seu piarum fundationum in iure reputari soleant, quasi odiosae, quia status eorum beneficiorum commutatur, dispositiones fundatorum subvertuntur, et sacra patrimonia diminuuntur, tamen, si necessitas aut utilitas manifesta adsit, Apostolica Sedes solet indulgere, ut huiusmodi uniones fiant. II. Unioni in themate favorem tribuit utilitas Ecclesiae, et quaedam necessitas ex penuria Sacerdotum Saecularium orta, qua Dioecesis illa laborat, Episcopo testante. AQUÉN. LIBERATIONIS. Die 18 Augusti 1888. Per summaria precum. COMPENDIUM FACTI. In pago Fontanile Dioecesis Aquensis, adest quoddam beneficium patronatus laicalis; cui adscriptum est onus quattuor missarum singulis hebdomadis. Patroni, praeter sacerdotem beneficio in vestitum, sunt Carolus Mauritius et Ioseph Prato. Hi autem, post mortem actualis beneficiati, tertia parte beneficialis sortis fisco soluta, iuxta...

[*Latin ed. p. 427*]

AQUÉN. 427. It is known by the laws of the civil code that theft, even of a benefice's endowment, absolutely benefits the owner. The Ordinary reported that a cleric who receives a benefice, and who is both patron and Charles, after his death, cannot dispose of the portion of the endowment of the benefice that would accrue to him, because he is enriched with another's property. Mauritius declared that he would proportionally contribute to the fulfillment of obligations when he or his heirs receive the portion of the endowment due to them; Joseph, however, the fourth patron, to whom would accrue a portion of the endowment of the benefice, amounting to 5,000 livres, offers this sum of money, even now, so that the ancient parish church of Fontanile, which is in a state of ruin, may be restored. The parish church promises to accept the conditions that, in this matter, the Ordinary may impose. The Ordinary, testifying to the sincerity of the intentions, from the beginning recommended the prayers, promising that, when the benefice becomes vacant, he would act according to the laws of the foundation of the benefice itself. And elsewhere, after having stated the conditions and intentions of the other patrons, he concluded in the same way: "Let it be granted that the offering of 2,000 livres may be accepted, because in this way at least a portion of the endowment of the benefice is secured, while the parish church promises to observe the orders of the Ordinary in this matter."

Synopsis of Discussion. Furthermore, the position of Joseph Pratopro seems pious and reasonable, both because it can meet the needs of the parish, and because the contribution can be made immediately, whereas it might perhaps be postponed for a long time. Moreover, this proposal can best adhere to the will of the founder, at least in its essence; for if the construction of the church, which promises to abide by the mandates of the Ordinary, can bear the burden of the quota of goods destined for the celebration of Mass, the arrangement of the lay chaplaincy would be entirely

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preserved, at least for the portion of this patron. With these premises, the question was raised, how the prayers should be granted.

[*Latin ed. p. 428*]

428 AQUÉN. RESOLUTION. The Sacred Congregation of Councils, reviewed, on August 18, 1888, decided to respond: Having paid the sum of 5000 livres and having renounced all rights to the patronage, for the purpose of obtaining the requested grant of freedom, and having been granted, in addition, the faculty by the Ordinary, to invest a capital sum for the annual celebration of 52 Masses, and to invest the remaining sum in the fabric of the Church, having agreed with the Most Reverend [Bishop], regarding the patronage. On December 15, 1888, and January 19, 1889, Session 25, Chapter 9, Concerning Reforms. SUMMARY OF FACTS. On January 15, 1880, due to the violent death of the parish priest Octavius Gentile, in addition to the parish, the simple benefice of Saint Joseph was also vacant, which had been established in the parochial church of the place of Sersale, with active and passive patronage belonging to the same family, the Gentiles. Furthermore, two members of the family, namely Caietanus Gentile, son of Raphael, and Antonius Gentile, son of Alexander, desired to present a priest, namely the priest Felix Antonius Gentile, their brother and nephew, respectively, for the benefice. However, James Colosimo, husband of Maria Rosa Gentile, and Marianna Talarico, widow of Aloysius Gentile, and their children, dissent; and they assert that, if any beneficiary were to be chosen, they would not choose Felix Antonius Gentile, but rather the priest Paschalis Ferri. It should be noted that these two families, as mentioned, actually held the assets of the benefice, which, perhaps, by the law of civil succession, could have obtained after the death of the parish priest Octavius. Indeed, the deceased parish priest was the brother of Maria Rosa Gentile and the brother-in-law of the deceased Aloysius Gentile. Since the patrons did not agree, in April of 1886, the priest Felix Antonius Gentile appealed to the Holy See, requesting that, as a consanguineous founder and passively called, he be admitted to the possession of the benefice.

[*Latin ed. p. 429*]

CATACEN. 429 After prayers offered to the Bishop for information and a vote, and after those present had heard the matter, it was reported concerning the rightful claim of the petitioner that what the petitioner had stated was true; but those who possess the benefits in question responded with this: if Lord Felix claims these rights, let him go to the tribunals. Others, however, repeatedly confirmed their will to the priest Felix, even providing formal letters to that effect. Therefore, on June 12, 1886, a further instruction was given to the Bishop to report "whether the patrons are prepared to comply in the case of a sentence from the Sacred Congregation." And shortly thereafter, when the two patrons who had nominated Felix insisted,

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another instruction was issued, namely: "The Bishop shall set a term for those holding the aforementioned benefits, within which they must present their claims, and if this term is allowed to pass without action, he shall provide for the transfer of the rights."

A SYNOPTIC ACCOUNT OF WHAT IS OBJECTED TO AGAINST PRIEST FELIX GENTILE. The adversaries of this priest report: that Paul Gentile, besides other things, left to his own nephew Joseph three small estates, which were to be administered by him and his descendants in perpetuity, with the obligation of celebrating one Mass each week, and of celebrating the feast of Saint Joseph with solemnity; in whose honor he erected an altar in the parish church. He also stipulated that a priest of good character should be appointed to administer these lands, who would descend from Joseph. Otherwise, the descendants could choose whomever they wished. They say that this chaplaincy was repeatedly conferred upon those descended from Joseph, up to the fifth generation; after which, Priest Felix Gentile is bound by no tie of consanguinity with these same descendants. They also report that the last to hold this chaplaincy was the parish priest Octavius Gentile, who, by the counsel and work of Priest Felix Gentile, was barbarously murdered. Concerning this matter, they continue, if those who have the right to nominate a priest were to proceed, they would never nominate Priest Felix Gentile, who, according to reports, was found by agents of justice among two prostitutes.

[*Latin ed. p. 430*]

430 CATANZARO. The blessed priest Felix Gentile, against whom accusations had been raised, responded to these arguments, demonstrating, above all, that he was entirely innocent of both the charge of immoral conduct and the alleged attempt to murder his uncle, Octavius Gentile. And the advocate refuted these charges by presenting: 1. Testimonies from the Most Reverend Bishop St. Nicaster, which attest that the priest lived commendably in the seminary; 2. Testimonies from eleven parish priests of Catanzaro and the locality of Sersale, all of whom praised his moral life and attributed the accusations against the priest Gentile to the malice of wicked men, and who related these accusations to the death of the parish priest Octavius; 3. Subscriptions from sixty leading citizens of Catanzaro, who likewise praised the advocate's honesty of life and affirmed their firm belief in his innocence from any crime. Furthermore, regarding the second accusation, the priest Felix Gentile considered it sufficient to state that, having been accused before a secular judge and placed in confinement, he was ultimately restored to his freedom, because no trace of any crime could be proven against him. A legal testimony regarding this matter is presented by the Chancellor of the Catanzaro tribunal. Moreover, on the part of the Catanzaro ecclesiastical authority, there are matters that confirm both the priest's innocence from the crime and the honesty of his life. Thus, with

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this objection regarding the candidate's unworthiness removed, the priest Gentile himself proceeded to address another point in his defense; and he argued that he could not be overlooked, but must absolutely be appointed. And to this end, he first recalled the law of the founder. Indeed, Paulus Gentile, parish priest of Sersale, in letters presented to the Bishop on December 20, 1678, proposed establishing a perpetual emphyteutic lease, or a perpetual patronage, for himself and his heirs and successors; and he requested from the Ordinary the permission to build an altar dedicated to St. Joseph in the parish church, where this benefice would be established; and he obtained this permission. He also requested that he be allowed to present to this benefice anyone from his relatives, even those under the age of 14. Furthermore, in order that a distinction be made between the successors and the patrons, he stipulated that the one who was presented from the Gentile family should be preferred, even if he had obtained a smaller number of votes.

[*Latin ed. p. 431*]

CATACEN. 431 The Bishop of Catacena formally recognized, confirmed, and ratified this pious will on the 26th of March, 1679; and thus, the benefice of Saint Joseph was duly established, according to the conditions stipulated by the founder. However, in his will of the 3rd of May, 1709, the founder, regarding the patronage of this benefice, first and second, expressed his will differently to his heirs, Lucca, John Baptist, Michael, and Anthony, his nephews from his brother Octavius, as well as to Joseph and Leonardo, his nephews from his brother Francis. But finally, in the last will and testament of the 2nd of May, 1713, with the renewed institution of the same heirs, he more clearly and coherently manifested his will, both concerning the active patronage and also concerning the passive patronage, ordering that the right of presentation should belong to his nephews, Michael, Anthony, Joseph, and Leonardo; who were to have the power to nominate anyone from their family, if present, otherwise, anyone else at their discretion. Therefore, from the founder's law, it follows that we are dealing with an ecclesiastical benefice here; and that, for this purpose, a cleric, if there is one, from the family, should be chosen; and that he should be preferred to others, even if he obtained fewer votes. This conclusion is confirmed by a practice spanning more than a century; for from the beginning of the past century, until the present, from the founder himself to the patrons who last exercised their right, a cleric or priest from the Gentile family has consistently been presented, and subsequently instituted ecclesiastically. The advocate demonstrates this by successively presenting the bulls of institution given by the Bishops concerning this matter. The last possessor of the benefice, as I pass over the others, was the parish priest of Sersale, Octavius Gentile, who was instituted by the Bishop to present his brothers, Bruno and Aloysius Gentile, with the first

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initially objecting, but then consenting, and with the other kinsman, Felice Gentile, also giving his vote. But the priest Felice Gentile is from the family, and moreover, he was presented not with the larger number of votes, but with an equal number. Indeed, he obtained two votes, the same as the foreign priest Ferri. Therefore, it would seem that he should be admitted, since the testator's will is clear. For the passive call "does not require..."

[*Latin ed. p. 432*]

432 CATACEN. Concerning the presentation of patrons, but it is stated that he was presented by the founder; this is a certain doctrine, received by all, which Pitonius vigorously defends in *De controversiis patrum*, Allegation 85, number 2, and in the *Rota Coram Papam*, Decision 99, number 2. This should hold with even greater force in this case, because the priest, Felix Gentile, was presented by the patrons, and the founder ordered that he be admitted, even if he is from a family, although called by fewer patrons. Furthermore, it cannot be doubted that those presenting the priest, Felix, are of the lineage and consanguinity after the investigation ordered by the Curia has been completed. Moreover, the priest, Felix Gentile, himself presents a genealogical chart, which the Curia of Catacensis has seen and approved, by which it is clearly demonstrated that the petitioner is connected, both on the paternal side and on the maternal side, with Joseph Gentile, the founder's nephew and heir. But what is more, those who most recently exercised the right of patronage were, namely, Bruno, Aloysius, and Felix Gentile. Furthermore, Felix Gentile is the grandfather of the petitioner, the priest Felix, and the grandfather of Anthony Gentile. Regarding this point, it does not seem that the question is challenged by the opponents; for they insist, according to the letters cited, either on the unworthiness of the priest Felix, or on the fiduciary nature of the endowment, or finally, on a certain interpretation of the will, by which they contend that the right of patronage is exclusively accumulated in Joseph. Finally, it has been observed that, since there are two patrons who actually hold the goods of the endowment, and who oppose the petitioner, it is entirely possible, given the sad condition of affairs in these times, that, in seeking to perfectly urge the supreme will of the testator, the entire will of the founder may be put at risk, and perish. With these things noted, the purpose is to resolve the doubt: Whether the priest, Felix Anthony Gentile, should be instituted to the endowment of Saint Joseph in this case. RESOLUTION. The Sacred Congregation of the Council, having considered the matter on January 19, 1889, decided to respond: Negatively, and furthermore.

[*Latin ed. p. 433*]

433 FROM THE SACRED CONGREGATION, the formula for blessing and bestowing the scapular of the Blessed Virgin Mary of Mount Carmel, which should be used by all priests who have the faculty to admit the

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faithful to the Confraternity of this same Scapular.

*Show us, O Lord, Thy mercy. (Responsorial Psalm). And grant us Thy salvation.

*Hear us, O Lord.

*The Lord be with you.

LET US PRAY: O Lord Jesus Christ, Savior of the human race, sanctify with Thy right hand this habit which Thy servant is about to wear devotedly, for love of Thee and of Thy most holy Virgin Mother Mary of Mount Carmel, that, through her intercession, he may be defended from the evil enemy and may persevere in Thy grace until death: Who livest.

Then, he sprinkles the habit with blessed water and says:

Receive this blessed habit, praying the Most Holy Virgin that through her merits she may present you without blemish, and that she may defend you from all adversity and lead you to eternal life. Amen.

Then he says: I, by the authority granted to me, admit you to share in all the spiritual benefits which are accomplished by the Religious of Mount Carmel, through the cooperation of the mercy of Jesus Christ. In the name of the Father, and of the Son, and of the Holy Spirit. Amen.

*Acts, Volume ZZI, page OC XLVII, 28.

[*Latin ed. p. 434*]

434 From the Sacred Ritual: May the Creator of heaven and earth, Almighty God, bless you, who has deigned to admit you into the confraternity of the Blessed Virgin Mary of Mount Carmel, and we pray that at the hour of your death, He may crush the head of the ancient serpent; and that you may finally attain the palm and the eternal crown of inheritance. Through Christ our Lord. Amen. The priest sprinkles [the person] with blessed water.

[From] the Decrees of the Sacred Congregation, of July 24, 1888.

LAURENTIUS SALVATI, Sacred Congregation Secretary.

DECREE approving the shorter formula for blessing, etc., mentioned above.

The Sacred Congregation of Rites, using the faculties specially granted to it by Our Most Holy Father Pope Leo XIII, and at the request of many priests, especially the Congregation of the Most Holy Redeemer, has approved the above-mentioned shorter formula for the blessing and the imposition of the scapular of the Blessed Virgin Mary of Mount Carmel, to be used by priests who have the faculty of enrolling the faithful in the same confraternity under the aforementioned title, after it has been reviewed by the Reverend Assessor of that Sacred Congregation. Contrary opinions notwithstanding.

July 24, 1888.

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A. CARD. BIANCHIS, Prefect. (L.S.)
LAURENTIUS SALVATI, Sacred Congregation Secretary.

[*Latin ed. p. 435*]

435 APPENDIX II. In which are recounted several Decrees of the Holy Congregation of Rites. TORTOSA. The Sacred Master of Ceremonies of the Cathedral Church of Tortosa, in order that all things may be performed according to the prescriptions of the rubrics during the recitation of the Divine Office and the celebration of Mass, humbly requested a declaration from the Holy Congregation of Rites regarding the following doubts:

Doubt I: According to the Decree in una Gerunden, of January 27, 1877, the Office for the Feast of the Blessed Virgin Mary of Guadalupe, which is assigned on February 26th in the Calendar, even in a leap year, without being impeded on the 25th of the same month, must be recited. The question is: in this case, should the praise of this feast, described as IV Kalendas Martii (March 1st), be anticipated to V Kalendas (February 25th), or should it be announced on the very IV Kalendas Martii (March 1st), when the feast has already been celebrated?

Doubt II: In many parishes of Hispaniae, according to the latest Concordat, there are removable Vicars appointed by the Ordinary to assist the parish priests in the administration of the Sacraments and other parochial functions. The question is: can and should such Vicars, even if temporarily assigned to the parish, recite the Office of the titular church of the parish, or is only the parish priest obliged to do so?

Doubt III: Since the Holy Congregation of Rites decided on November 12, 1831: that the celebrant, during a solemn Mass, when he is seated, should uncover his head for those verses to which he is to incline; the question is: should he uncover his head only for those verses that are sung by the choir, or also for those that are supplied by the organ, and recited in secret by those assisting in the choir?

Doubt IV: According to the Ius Caeremoniale Episcoporum, Lib. I, Cap. 18, n. 4: "If any Canon comes in after the Office or Mass has begun... he immediately kneels towards the altar, briefly praying." The question is: if someone exits from the choir for some necessity, and then re-enters while the Office is continuing, is he obliged to kneel and pray each time the choir re-enters, or only the first time?

Therefore, the Holy Congregation of Rites, after hearing the report of the undersigned Secretary, and the opinion of another from the Masters of Apostolic Ceremonies, decided to declare:

[*Latin ed. p. 436*]

436 APPENDIX II. Regarding I. The prescription of the rubric in the Roman Martyrology must be observed. Regarding II. Affirmative to the first part; Negative to the second, and a decree shall be issued on the first

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day of August, 1877. Regarding III. The head must always be uncovered. Regarding IV. The celebrant should consult approved authors. And thus it was declared. On July 27, 1878. CONGREGATION OF THE VISITATON OF THE BLESSED VIRGIN MARY! Regarding the Visitation of the Blessed Virgin Mary, a question was posed to the Monasteries of the Visitation of the Blessed Virgin Mary, located in the city commonly called Paray-le-Monial, within the Diocese of Augustodunum. The following questions were presented for a suitable response: 1. Whether the feast of the Visitation, which is the principal feast of the Order, can be celebrated by them with a double rite of the first class. 2. Whether this same feast takes precedence over any feast of the second class, for example, the Most Precious Blood of Our Lord Jesus Christ, which sometimes occurs on the same day as the feast of the Visitation? 3. Whenever the feast day of July 2 falls on a Sunday, must a solemn Mass with singing be celebrated for this feast? The Holy Congregation of Rites, in response to the report of the undersigned Secretary, responded as follows: Regarding I. Negatively, unless by special indult. Regarding II. The rubrics must be observed; and concerning the feast of the Most Precious Blood of Our Lord Jesus Christ, a decree was issued on March 26, 1859, for the Piarist Schools Congregation, regarding I. Regarding III. The Sisters should ensure that two Masses are celebrated, one Conventual according to the Office, and the other for the transferred feast. And thus it was responded and ordered to be observed. On July 27, 1878. SAINT JAMES OF CHILE. The Metropolitan Church of Saint James of Chile humbly requested a resolution from the Holy Congregation of Rites regarding the following doubt: Whether Dignitaries and Canons must stand for the Confession and Benediction during the Conventual Mass, even when they are not wearing sacred vestments? And the Holy Congregation of Rites, in response to the report of the undersigned Secretary, deemed it appropriate to respond to this doubt as follows: Affirmative, according to other decrees. And thus it was responded. On July 27, 1878. SENS. The Superior of the Society of Priests Oblates of the Sacred Heart of Jesus and Saint Edmund, located in the Diocese of Sens, humbly proposed the following two questions to the Holy Congregation of Rites for resolution:

[*Latin ed. p. 437*]

Question I. Concerning the oratory of the aforementioned Society, in which Masses are celebrated daily and the Most Holy Sacrament of the Eucharist is reserved, there is a place intended for walking, but a stone and solid chamber is located, separated from the oratory itself, above which a room has been constructed for the residence of the novices. The question is whether such an arrangement of places can be lawfully maintained?

Question II. In the parish cemetery, the mortuary chapel of the same Society is arranged in such a way that in the crypt, the burial niches for the dead

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are arranged so that in the chapel itself, properly called a crypt, separated from the crypt by a chamber, there is an altar where Mass is sometimes celebrated. The question is whether it is permissible to perform the holy sacrifice of the Mass on this altar, even though, in a straight line, there are corpses in the crypt, which is completely separate from the oratory?

Furthermore, the Sacred Congregation, having heard the report made by the undersigned Secretary, and having also examined the layout of the places, decided that both questions should be answered: Affirmatively. And so it responded.

July 27, 1878. BERGOMEN. The Primicerius Canon of the Cathedral Church of Bergamo, humbly requested:

I. Whenever, during the time of Lent, a special Indult is granted, is the following recited in the choir on Sundays after Vespers and Matins with the praises following *Dix* n. 437, for the prayers of the feria and for the suffrage of the Saints, in the same way as in the feria antiphons of the Blessed Virgin Mary on Sundays?

II. Having recently obtained from the aforementioned Cathedral Church an Indult to celebrate an external feast in honor of the Most Sacred Heart of Jesus on the next Sunday, the sixth day after the Octave of the Most Holy Body of Christ, with all the Masses, both solemn and chanted, of that feast, is it permissible to accept such an Indult only for the chanted Masses, so that two solemn Masses do not have to be sung in the choir?

Furthermore, the Sacred Congregation of Rites, with the reference of the undersigned Secretary and having heard the opinion of another of the Masters of the Apostolic Ceremonies, decided to declare as follows:

To 1. Negative.

To II. Considering the practice in granting such Indults by the Holy See, it is not permissible. And so it declared.

August 3, 1878. BELLUNEN. AND FELTREN. Reverend Fathers.

Since Your Eminence is in doubt as to whether this Cathedral Church of Belluno requires a new consecration, not only because of the recent repairs carried out there, but also because of the lack of any monument by which it can undoubtedly be established that the prescribed rite was observed in its first dedication, the Sacred Congregation has been asked for a suitable declaration in this case.

[*Latin ed. p. 438*]

438 APPENDIX. The Sacred Congregation, after hearing the report of the undersigned Secretary, and another of the Masters of the Apostolic Ceremonies, judged that the aforementioned Cathedral Church should be consecrated entirely, but without any change to the day for the celebration of its anniversary, which is also to be observed in the future on the second Sunday after Easter. Rome, August 1st, 1878. To the Most Reverend Lord,

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as Brother Bishop of Belluno and Feltre, from Syracuse. The Reverend Monsignor Blasius Bellasai, Archdeacon of the Collegiate Church under the title of the Annunciation of the Most Holy Virgin, in the town commonly called Comiso, within the boundaries of the Archdiocese of Syracuse, having been forbidden by his Archbishop to wear the stole outside of the administration of the sacraments, humbly petitioned the Sacred Congregation, so that, considering the custom of his predecessors, who always wore the stole as a sign of their dignity in the aforementioned Collegiate Church, this privilege might be declared to be retained for himself and his successors. The Sacred Congregation, after hearing the opinion of the Most Reverend Archbishop of Syracuse regarding the information and the request, and after considering the report of the undersigned Secretary, judged that it should declare as follows: The Archdeacon shall use the stole only in processions if the Archpriest is absent. And so it declared and decreed. November 26th, 1878. MACERATA AND TOLENTINO. The current parish priest of the village of Colmorano in the Diocese of Macerata and Tolentino, greatly distressed by the fact that the confraternity erected near the Most Holy Sacrament in the parish church is denied the right to participate in the collection of offerings and alms, which the members of the confraternity usually seek, either within the church itself or within the boundaries of the parish, and which are used either to purchase sacred furnishings for the use of the church, or to increase the beauty of divine worship, humbly inquired of the Sacred Congregation: Whether the confraternity or the parish priest has the right to administer the alms collected in the parish church; and, if the parish priest has the right, whether the confraternity can administer the alms collected in the parish, independently of the parish priest, for the benefit of the souls in Purgatory, as has been done until now with the alms collected in the parish church? The Sacred Congregation, after considering the information of the Most Reverend Bishop of Macerata and Tolentino, and the report of the undersigned Secretary, judged that in this case it should declare as follows:

[*Latin ed. p. 439*]

In the power of the Most Reverend Bishop, so that, according to his prudence, he may consider the matters concerning the institutions of Pope Benedict XIV (c. V. g. V.). And thus it was declared and written. On November 26, 1878, in SENESI. To the Sacred Congregation of Rites, for the purpose of performing and celebrating the divine Office in the Archdiocese of Siena, the following question was presented for appropriate declaration: When the Most Holy Sacrament of the Eucharist is to be administered during the Paschal season, before or after the Mass for the Dead, should the prayers and verses of the season, and the Alleluia, be said? The Sacred Congregation of Rites, having carefully considered the matter, and in accordance with the report of the undersigned Secretary, decided to

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declare as follows: Affirmative regarding the prayers and verses; negative regarding the Alleluia. And thus it was declared. On November 26, 1878, in GORITIEN. The Master of the Sacred Ceremonies of the Metropolitan Church of Goritien, humbly inquired of the Sacred Congregation of Rites as follows: I. In the Metropolitan Church of Goritien, in recent years, on the third Friday of Lent, on the Friday designated as number 439, a procession has been held within the walls of the church, with the Relic of the Holy Wood of the Cross of Our Lord Jesus Christ, which is carried under a baldachin, with a thurifer preceding, and with sacred ministers wearing black vestments. Is it permissible for this procession to continue? II. A sodality, called "Subsidiis pro Presbyteris Indigentibus," which has existed there for a long time, has as its patron saint Saint John Nepomuk, and therefore celebrates its patronal feast on May 16, to which a plenary Indulgence has been granted by the Supreme Pontiff. Is it permissible in the Metropolitan Church, in which there is a side altar dedicated to the same saint, to say one prayer and the Creed? Or, rather, should this Mass be treated as a private Mass on that day? And the Sacred Congregation of Rites, having heard the report of the undersigned Secretary, responded as follows: Regarding I. Affirmative, provided that the procession is not within the Office and the Mass, but is extra-liturgical. Regarding II. If the sodality is established at the altar of Saint John Nepomuk within the Cathedral itself, then the solemn Mass should be sung with one prayer and the Creed; otherwise, it should be sung in the same manner as private Masses are celebrated. And thus it was responded and written. On November 26, 1878, in TURONEN. In the Archdiocese of Tours, as in some other dioceses,

[*Latin ed. p. 440*]

440 APPENDIX II. In Gallia, due to an interpretation of the Indult (dispensation) granted by Cardinal Caprara, the legate, for the reduction of feasts on April 9, 1802, in almost all parochial churches, certain saints have been observed as titular patrons of those churches. Consequently, their feasts are transferred to the following Sundays with a solemn Mass. It would be very difficult to persuade the clergy and the faithful to abandon this practice, if the feasts commonly called "patronal feasts" are indeed the feasts of the titular saints. Therefore, the Archbishop of Tours, well aware that this did not accord with the decree of Pope Urban VIII, nor with sound principles regarding titular feasts, nor indeed with the prescriptions in the aforementioned Indult granted by the legate, earnestly petitioned His Holiness, Pope Leo XIII, to deign to grant an Indult, by virtue of which, in any church of the Archdiocese of Tours that does not have a patron saint distinct from its titular saint, the feast of the titular saint might be observed in the same manner as the feast of the patron is celebrated. Furthermore, the Sacred Congregation of Rites, after careful consideration, and using the special faculties granted to it by the same Most Holy Pope,

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decided to respond to these requests as follows: "Provided that the patron is not a particular saint of the town; provided, however, that there is no custom of honoring the patron of the diocese." And thus it responded and granted the Indult. November 26, 1878. The Bishop of Jaca reported to the Sacred Congregation of Rites that in his cathedral church, the custom was observed whereby the choir, after completing the singing of "Gloria Patri," would respond to the part of the Introit, and then the entire Introit would be sung by the choir without any response. Since this custom appears to be contrary to the practice in other churches, in which the Introit is repeated partly by the choir and partly by the choir, the same Bishop humbly inquired of the same Sacred Congregation: "Is it permissible for this custom to be maintained in the cathedral church of Jaca?" The Sacred Congregation of Rites, after hearing the opinion of another of the Masters of the Sacred Ceremonies, and considering the report of the undersigned Secretary, decided to respond as follows: "Let the custom be maintained." And thus it responded. November 26, 1878. The Reverend Lord Louis Anna Nogret, Bishop of Saint-Claude, humbly presented the following questions to the Sacred Congregation of Rites for resolution:

[*Latin ed. p. 441*]

I. Regarding the Feast of Saint Claudius: The solemnity of Saint Claudius, Bishop, Patron of the Episcopal City and Diocese, which had been celebrated on the Sunday following, was transferred, according to the instructions of Cardinal Caprara in the year 1802, to the nearest Sunday for the benefit of the faithful, and this practice was to be followed even in places where the feast of the particular patron was to be celebrated in a similar manner, and indeed is being observed. The question is raised whether the solemnity of Saint Claudius ought or can be transferred in such places.

II. Concerning the Titular Saints of the Cathedral: The titular saints of the Cathedral of Saint Claudius are, with equal and the same reason, the Most Holy Apostles Peter, Paul, and Andrew. However, up to now, the feast of Saint Andrew has customarily been celebrated under the double rite of the second class, without an octave. The question is raised whether it ought to be celebrated in the aforementioned Cathedral under the double rite of the first class, with an octave.

III. Regarding the Dedication of Churches: It is also asked whether, in unconsecrated churches, the Dedication of all churches ought to be celebrated under the double rite of the first class, with an octave, on the Sunday of November 2nd (according to the aforementioned instruction of Cardinal Caprara, given for Gallus).

And the Sacred Congregation, after a careful deliberation, having heard the opinion of another of the Masters of the Ceremonies of the Apostolic See, and having heard the report of the undersigned Secretary, has approved of these questions and answers:

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To I: Negatively.

To II and III: Affirmatively.

And thus it has responded and ordered that it be observed.

October 20, 1878.

441 PLATIEN.

To the Most Reverend Father: "Monsignor Francesco Gerbino, Bishop of Piazza, humbly requests an answer to the following question: Is it permissible to reproduce in wood a statue that has been venerated since 1872 in Boviafranco by the Pious Union, canonically erected under the title of Our Lady of the Sacred Heart, which represents it according to the model venerated in Issoudun, or must a new statue, similar to the other form, be displayed, as approved by a decree of April 29, 1875, by the Most Holy Father Pope Pius IX?"

The Sacred Congregation for Rites, after hearing the report of the undersigned Secretary, and after hearing the Reverend Assessor of the same Sacred Congregation regarding the aforementioned question, responded:

According to the meaning of the Decree of the Holy and Universal Inquisition, it is permissible only in the second manner.

And thus it responded.

October 29, 1878.

ANDEGAVEN.

Since a question has been asked by Father Eugenio Falour, Professor at the ecclesiastical college commonly known as the Institute of Saint Joseph, in the town of Bauge, within the Diocese of Andegaven, to the Sacred Congregation for Rites: Should common prayers be added by the professors of the ecclesiastical college to the Vespers and Lauds?

[*Latin ed. p. 442*]

442 APPENDIX II. Concerning the Patronage of the Place in which the College is Situated? The Sacred Congregation, referring to the attached report from the Secretary, responded: "The Decree of Bruges, dated September 12, 1840, concerning Question III, must be observed." And so it responded and declared on November 29, 1878. MARIANOPOLITANA. The Most Reverend Lord Edward Fabre, Bishop of Marianopolitan, presented the following to the Sacred Congregation of Rites: "The main chapel of the Major Diocesan Seminary, which resembles the form of a church, was consecrated fourteen years ago; from that time, not only have the liturgical offices been solemnly sung in it on Sundays and feast days throughout the year, with the presence and cooperation of a group of clerics, but also the titular feast and the anniversary of the dedication of the same chapel have been celebrated annually by all priests, deacons, and subdeacons assigned

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to the same seminary, with a double rite of the first class, with the *octava*, with the approval of the Ordinary. Recently, however, when the legitimacy of the celebration of both of the aforementioned feasts was called into question, because the entrance to the same chapel is not indiscriminately open to outsiders, and therefore, according to some, it seems to be within a private chapel, concerning whose titular feast and dedication no one is permitted to recite the office, the Most Reverend Bishop himself requested that the Sacred Congregation declare: 'Was the celebration of the titular feast and dedication of the aforementioned chapel correctly introduced from the beginning?' And the Sacred Congregation, after carefully considering the report of the attached Secretary, judged it fitting to declare as follows: 'Provided that the chapel was truly consecrated and not simply blessed, the office of both the titular saint and the dedication must be celebrated.' And so it declared and decreed on November 29, 1878. MILWAUKEE. When the following question was presented to the Sacred Congregation of Rites by the Reverend Father Fayan, Professor at the Seminary of Milwaukee, for appropriate resolution: "Since in many places in that region, the custom of omitting the sprinkling with blessed water on Sundays, even before the principal or parochial Mass, which is not sung, has become prevalent, is it permissible to maintain this custom?" The Sacred Congregation of Rites, referring to the attached report from the Secretary, judged it fitting to respond as follows: "The blessing of which we are speaking is prescribed only before the Conventual Mass, when this Mass is celebrated with singing and ministers." And so it responded on December 9, 1878.

[*Latin ed. p. 443*]

TARANTO. The Most Reverend Lord Charles Francis, Bishop of Taranto, humbly proposed to the Sacred Congregation of Rites for a suitable declaration concerning the following matters: That, by the Apostolic Indult of July 30, 1863, in the churches of the Diocese of Taranto, three times each week, provided that the double rite is permitted, Masses may be sung, with the exception of Masses for the Dead, but excluding the first and second class double rites, on days of precept, on weekdays, and during privileged vigils and octaves. A similar Indult is in force in the other dioceses of Savoy, but since the interpretation of this is not the same in all of them, the following questions are asked: 1. Whether it is permissible to sing the Mass for the Dead three times with the double rite, even if there are days of the lower rite in the same week? 2. Whether, on the same day with the double rite, more than one Mass for the Dead can be sung in the same church? The Sacred Congregation of Rites, after considering the report of the undersigned Secretary regarding both questions, decided to respond as follows: Affirmative. And thus it responded and declared. December 18, 1878. OVETEN. The Most Reverend Lord Benedict Sanz y Fores, Bishop of Oveten, humbly requested a resolution from the Sacred Congregation of

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Rites concerning the following doubt: 443. Regular canons, expelled from their monasteries by the civil government, have transferred parishes to some of their churches, which are located in the same places, because the churches of the canons seemed more suitable for the service of the people; the former parochial churches remain as public chapels. The new parochial churches are called by the title of the old ones, and in some cases, the titular image has been transferred from the former church to a more prominent location. The question is whether the parish priests are obliged to perform the offices both of the titular or patron of the parish, and of the regular church which is now a parochial church, under the double rite of the first class, with the octave? The Sacred Congregation of Rites, after considering the report of the undersigned Secretary, and having heard the opinion in writing of another of the Masters of the Apostolic Ceremonies, decided to respond as follows: Negative to the first part; but if the transfer of the parishes has been made permanently, then application must be made to the Most Holy Father for permission to perform the offices of both the old and the new parishes; Affirmative to the second part. And thus it responded and declared. December 20, 1878. GNESEN AND POSNANIA. The Most Reverend and Illustrious Lord Cardinal Miecislaus Ledochowski, Archbishop of Gnesen and Posnania, proposed the following two doubts to the Sacred Congregation of Rites:

[*Latin ed. p. 444*]

444 APPENDIX II. Doubt I. The Decrees of the Sacred Congregation of Rites prohibit the celebration of a private Mass at the main altar during the time when the Hours of the Divine Office are being recited in the choir; it is asked whether, under the denomination of "Hours of the Divine Office," the Office for the Dead is also to be understood? Doubt II. And, if so, does this prohibition extend to those churches in which the aforementioned choir is not properly located, but in which various priests, on the occasion of funerals, recite the Office for the Dead together? Furthermore, the same Sacred Congregation, upon hearing the opinion of a secretary and also reading the written opinion of another from the Masters of the Apostolic Ceremonies, considered it appropriate to respond to both doubts: Affirmative. And thus it responded and declared. On December 20, 1878. In the NORTH AMERICAN TERRITORIES, the priest Joseph Maria Finotti, residing in the state commonly called Colorado in North America, presented the following to the Sacred Congregation of Rites: He had been invited to administer the renewal of vows to the religious sisters of the community known as the Sisters of Saint Joseph, and he found that in such a function, the following custom prevailed: namely, that before each sister received the Most Holy Eucharist, she would recite the formula of her vows, but in such a way that each sister first recited the formula herself, and then immediately received the Most Holy Sacrament; meanwhile, the priest

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stood before the altar screen, holding the sacred host in his hands. Since this custom seemed irregular to him, he considered it better to follow the one observed elsewhere, according to which the priest, after saying "Have mercy..." and "Grant indulgence...", turned to the altar and waited until all the religious sisters had recited the formula of their vows; and after this act was completed, and the words "Lord, I am not worthy..." were spoken, he distributed the Most Holy Eucharist. The aforementioned priest, wishing to know what should be done in this matter, humbly presented the following doubts to the same Sacred Congregation of Rites: I. Is it permissible to receive the renewal of vows in the first manner? II. Is the method that he himself followed the correct one? III. And, if it is not the correct method, what is the approved and acceptable method for receiving the recitation or renewal of vows? The Sacred Congregation of Rites, upon hearing the opinion of the aforementioned secretary and also reading the written opinion of another from the Masters of the Apostolic Ceremonies, considered that the following should be the response to the proposed doubts: To I. It is not permissible, and the method in question should be completely eliminated. To II. It is more appropriate to do it outside of Mass, and it is only to be tolerated during Mass to the extent that the formula of the renewal of vows...

[*Latin ed. p. 445*]

IX. II. The words should be pronounced in a loud voice by one of the nuns, with the others mentally approving. III. Regarding what was mentioned previously. And so it was answered, and it was commanded to be observed. January 10, 1879. CENETEN. The priest, Angelus Fassetta, the Vicarius Foraneus of the place commonly called Latran in the Diocese of Genet, presented the following to the Sacred Congregation of Rites, humbly requesting a resolution: "On the occasion of the meetings of the parish priests, which are held annually, as prescribed by the Diocesan Synod, either in one or the other church of this Forane Congregation, the Mass of the Holy Spirit is sung according to ancient custom, even in the Duplicates, but not the I and II class Masses with the Gloria, Creed, and 'Ite Missa est.' After the solemn Mass, the Vespers of the Dead are sung, even though the middle of the day has not yet passed. These customs, as mentioned above, also take place in some other Forane Congregations of this Diocese. The question is whether such rites, concerning the Mass and the Vespers, can be maintained. And the Sacred Congregation, after mature deliberation, with reference to the undersigned Secretary, decided as follows: Affirmative regarding the Mass of the Holy Spirit; regarding the Vespers, Negative, and the Nocturn of the Dead may be recited." And so it was written. January 10, 1879. CLUNIEN. OR THE PRIORATE OF THE MILITARY ORDERS. In the Lord, Brother. A. T. presented the following to this Sacred Congregation of Rites in this Cluniensis city: that

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from time immemorial, on Palm Sunday, the palms are blessed in the Senate building, and this is done in the Session hall (a chapel is indeed desired) by one of the parish priests, with the other members of the parish clergy present. Now, since the parish church of Saint Mary in the same city has recently been erected as an Episcopal church, a doubt has arisen as to whether such a custom of blessing the palms in a profane hall should and can be maintained, and whether the Bishop, considering this custom, should excuse all the parish priests of the city, as well as the parish clergy, from participating in the blessing which is to be performed by him in the said church with the Chapter of Canons, the Beneficiaries, and the other clergy of the Cathedral Church. Having presented these requests to the Sacred Congregation of Rites through the undersigned Secretary, the Sacred Congregation, after hearing the opinion of another of the Masters of the Apostolic Ceremonies, A. T., decided that the aforementioned custom of blessing the palms in a profane hall should neither be nor can be maintained, and that the Bishop cannot...

[*Latin ed. p. 446*]

446 1 APPENDIX II. to urge, but only the Parish Priests and the parochial clergy, to attend the blessing of the Palms, which is to be performed by himself. For the rubrics, both in the Missal and the Ceremonial, prescribe no other place for performing this function than the Church; and if it could not be performed there, it would rather be omitted. Furthermore, this function is not exclusively proper to the Cathedral, as is the Consecration of Oils on the fifth feria in the Lord's Supper, and therefore the attendance of Parish Priests and the parochial clergy is by no means required; indeed, by a General Decree of December 10, 1705, not all the functions of the Greater Week are of parochial right, since they can also be performed by non-parochial priests and in other churches. Rome, January 10, 1879. To the Most Reverend Brother, Victoriano Guisasola y Fernandez, Bishop of Dora, Prior of the Military Order in Spain. IACENA. Among the doubts which were resolved by the Sacred Congregation of Rites by Decree of January 30, 1878, the following was included: Whether the Parish Priests or Archpriests of the places named Giarre, Piedimonte Etneo, and Riporto, which have been separated from the Diocese of Messina, may use a violet mantle and a ring adorned with gems in ecclesiastical functions; and whether they may use four ministers dressed in dalmatics and tunics in the solemn Mass? Since the aforementioned Sacred Congregation had responded to this doubt: Negatively to the first part; and postponed, and to be heard, the Master of Ceremonies regarding the second part; the aforementioned Parish Priests or Archpriests insisted for a definitive declaration of the second part of the aforementioned doubt. Therefore, the Sacred Congregation, having heard the report of the undersigned Secretary, and having considered all matters in the present case, has declared and responded as

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follows: In accordance with the decisions according to the Decree of July 28, 1876, that is: Negatively in all respects, and the Orators shall obey the decisions of the Sacred Congregation of Rites. And thus it was declared and responded. January 24, 1879. URBS. When it was to be inaugurated in 1877 the altar newly constructed in the hypogeum of the Basilica of Eudoxia, for the safekeeping of the sacred relics of the Prince of the Apostles, a doubt arose: whether the right to consecrate it belonged to the Most Eminent Cardinal, titular of the Church, or rather to the Most Eminent Cardinal, Vicar of the City. Pope Pius IX entrusted the judgment of the question to four Cardinal Bishops of the Suburbicarian dioceses; meanwhile, on the festive day of the consecration, a meeting was held.

[*Latin ed. p. 447*]

IX. II. The consecration, by reason of possession, is to be performed by the Cardinal holding the titular see; hence, the solution to the doubt was extended. The Supreme Pontiff Leo XIII, considering it fitting, by divine providence, to carry out what his predecessor had wisely decided, and deeming it entirely opportune to remove all further occasion for doubt regarding the exercise of the aforementioned jurisdiction, commanded the Most Eminent Cardinal, Dean of the Sacred College, to convene, as soon as possible, a particular Congregation. Furthermore, he deigned to add four Most Eminent Suburbicarian Bishops to the aforementioned Congregation, along with the Most Eminent Cardinal Bartolini, Prefect of the Congregation of Sacred Rites, in place of the Most Eminent Cardinal, Bishop of Tusculum, who was infirm. Thus, on the twenty-fifth day of January, they assembled, by common consent, in the residence of the Most Eminent Cardinal, Prefect of the Congregation of Sacred Rites, namely, the Most Eminent Cardinal Di Pietro, Dean of the College and Bishop of Velletri and Ostia; the Most Eminent Cardinal Sacconi, Bishop of Porto; the Most Eminent Cardinal Bilio, Bishop of Sabina; the Most Eminent Cardinal De Luca, Bishop of Palestrina, together with the Most Eminent Cardinal, Prefect of the Congregation of Sacred Rites, and the Secretary of that same Congregation; who, after a thorough examination, and the most careful discussion of opinions, and after elaborate and extensive consultations, which had been prepared by both Doctors of Canon Law and Masters of Sacred Ceremonies, unanimously answered the following question: Whether the right to consecrate altars in churches belonging to a Cardinal's title pertains to the Most Eminent Cardinals holding those titles, or rather, to the Most Eminent Cardinal, Vicar of the City? They answered, by unanimous vote: Affirmative to the first part; Negative to the second. After a report on all matters was made to the Most Holy Lord, our Pope Leo XIII, by the aforementioned Secretary of the Congregation of Sacred Rites, in an audience on January 30, 1879, His Holiness approved the answer of the Most Eminent Cardinals regarding the proposed question, confirmed it with his authority, and ordered it to

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be made public.

OF THE MOST HOLY SACRAMENT. The following questions were humbly presented to the Sacred Congregation of Rites by the Reverend General Procurator:

Question I. Whether, when two feasts of the dedication of churches coincide, the words "Quem nomini tuo indigni dedicavimus" should be recited in the second "Postcommunio"?

Question II. Whether, during ex-

[*Latin ed. p. 448*]

448 Concerning the exposition of the Most August Sacrament, is it permissible to recite or chant the Office for the Dead in the choir? Doubt III. If the blessing of the Most Holy Sacrament with the ostensorium is given repeatedly during the Paschal season, is it permissible to light the Paschal candle each time? And the Sacred Congregation, after carefully considering these doubts, as reported by the undersigned Secretary, has responded as follows: To I. Affirmative. To II. Negative. To III. Negative. And thus it has responded and ordered that it be observed. February 8, 1879. 5i ix n. ATUREN. AND AQUEN. When the Most Reverend Lord Peter Delannoy, Bishop of Ature and Aquen, humbly requested whether, according to necessity, it is permissible for him to reduce to only twelve the number of candles that must continuously burn before the Most Holy Sacrament publicly exposed for perpetual adoration, in the most impoverished churches of his diocese; the Sacred Congregation of Rites, with the reference to Institution 30, number 24, *sede me* of Pope Benedict XIV, responded: Affirmative. And thus it responded. February 8, 1879.

[*Latin ed. p. 449*]

449 Letters from His Holiness Pope Leo XIII to the President of the Republic of Ecuador, in which he expresses his congratulations for his dedication to the Catholic religion. Beloved son, and most noble and Apostolic Illustrious Man, greetings and blessings. Your outstanding piety and the zeal with which you strive to spread the salutary influence of religion among those who inhabit the region under your governance are clearly demonstrated in the letters which you presented to Us on the eve of the Ides of August. Indeed, We were wonderfully pleased by these, and even more so because We understood that the sentiments and requests expressed therein did not originate solely from you, but also from both the Most Illustrious Orders, to whom the power to enact laws belongs. Therefore, it was not unknown to Us that these letters expressed the sentiments, will, and aspirations of the entire nation. This common endeavor to expand the Kingdom of Christ through the Apostolic Vicariates established in the Amazonian regions is a source of comfort to Us, as much as it is an honor to you and a cause for praise. It clearly demonstrates the living faith that flourishes

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among the people, and, in you and others who are at the head of affairs, it reveals piety joined with prudence, worthy of the importance of your office and the high honor you hold. And indeed, there is nothing more fitting for Christian men and wise leaders of the state than to dedicate themselves to the task of illuminating with the light of the Gospel doctrine that vast multitude of people who live near your cities and towns, freeing them from the darkness of ignorance and, having cast off the roughness of their manners, accustomed to human and civil culture. Therefore, Beloved Son, Noble and Illustrious Man, rest assured that we will do everything possible to fulfill your desires, and that your requests, which We have embraced, will receive our utmost attention. Indeed, We have already instructed prudent and experienced men, whose efforts and counsel We employ in such matters, to devote their attention to this, seeking the best way to carry out these affairs conveniently and properly. Therefore, We hold a joyful hope that the events you desire will unfold successfully, and that the undertaking, carried out with diligence and wisdom, will yield abundant fruits of salvation. Moreover, We do not believe that the benefits conferred upon you and the people you govern will be without reward. For those wild tribes and their descendants, once freed from their former savagery, and having embraced religion and all the arts of humanity, will not fail to offer you eternal gratitude, and the deeds of your service will merit such a reward.

[*Latin ed. p. 450*]

450 Letters are brought to you and are obtained from the greatest benefactor of all goods, namely God. Meanwhile, to you, beloved Son, Noble and Illustrious Man, we offer our heartfelt congratulations for having entered the path that leads to true and solid glory, while diligently pursuing your studies in religion; and with certain confidence, we strive that you will never be dissimilar to yourself, and that you yourself will constantly be a devoted son to the Church, and prepared to be a helper in its service. Finally, as a witness of paternal charity, we impart to you, to the two public Councils, and to the entire people over whom you preside, our apostolic Benediction. Given in Rome, at St. Peter's, on the 30th of January, 1889, in the Eleventh year of Our Pontificate. LEO P. P. XIII.

Letters from Anthony Flores, President of the Republic of Ecuador, to Pope Leo XIII in Rome. Among the most important concerns that have continuously distinguished this Republic of Ecuador, there has certainly been the diligent effort to instruct the countless tribes, and those barbarian peoples, who inhabit the vast and remote forests of the Amazon region (which, unfortunately, is still an uncultivated part of this Republic), in the Gospel of salvation, and in civil virtues. In rightly pursuing this goal, both human and Christian, our public treasury, which is quite meager, has spared no expense, so that the Dominican, Jesuit, and pious Sisters

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of the Good Shepherd might have a stable and permanent station in those regions. Indeed, the fruits of these efforts are the flourishing missions in Ñapo, Canelas, and Macas: where, due to the constant preaching of evangelical workers, and the schools for boys and girls of both sexes, Christian and civil culture are increasingly spread and perfected, where hitherto ignorance and barbarism prevailed. The current and future administrators of the Republic, as far as they themselves are concerned, strive with all their might, and in the most effective way possible, to ensure that our holy Catholic faith be spread as quickly as possible to all the peoples subject to them, even those living in the most remote and inaccessible regions. For this purpose, we indeed appeal to the benevolence of the Holy See, so that it may generously expend and pour forth a portion of its Apostolic Treasury upon those sons of America, whom we hope will soon be docile adorers of the Cross.

[*Latin ed. p. 451*]

Letters 451. Therefore, I implore Your Holiness, that, according to the law detailed herein, which was recently promulgated at the final meeting of the Governors of our Republic, you grant what I request, for the benefit and grace thereof. Firstly, that the entire territory east of the Equator be divided into these four Vicariates: 1. Napensi. 2. Canelasen and Macasen. 3. Mendesin and Gualaquiran. 4. Zamoren. Secondly, that, while the care of the first two Vicariates, namely Canelasen and Macasen, remains with the Most Reverend Fathers of the Society of Jesus and the Dominicans, as is presently the case, the third Vicariate, namely Mendesin and Gualaquiran, be entrusted to the Fathers of the pious Society of Saint Francis de Sales, founded by the Most Reverend Don Bosco, whose memory is blessed; and the fourth, namely Zamoren, be entrusted to the Most Reverend Fathers of the Order of Saint Francis, who have recently established a residence there in the city of Loja. Thirdly, that, with the exception of the Vicariate of Napensi, which is under the care of the Fathers of the Society of Jesus, the remaining three Vicariates be placed under the jurisdiction of the Holy Congregation for the Propagation of the Faith, and be subject to the prudent and ecclesiastical laws by which the Sacred Missions are usually governed, under the patronage of so excellent a patron. Finally, that the office of Apostolic Vicar in those regions be always conferred upon those Evangelical Workers endowed with the dignity of a Bishop (which, undoubtedly, grants the power and authority necessary for the Apostolic office, due to the fullness of the priestly charisms with which they are endowed, an authority to which it is difficult to object). Indeed, I firmly hope that Your Holiness will deign to grant the requested favors most generously: for the Apostolic See will certainly not fail to extend its constant charity to the regions of the Equator, as it always does, and especially in these our times, embracing all peoples, in order to lead them to the ad-

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mirable light of the Christian faith and the splendor of human culture. On this auspicious occasion, I am filled with honorable joy, and I offer to Your Holiness a special tribute of my veneration, and I assure you that, as a Catholic magistrate of a people who is also Catholic, I will never fail to demonstrate my filial reverence for the Holy Catholic Church, and to express the devotion with which, Most Holy Father, I honor and cherish Your Holiness, in Quito: From the Halls of the Republic, on the 6th of October, 1888. Your obedient son, A. Flores Franciscus S. Salazar.

[*Latin ed. p. 452*]

452 DECREE of the College of those charged with enacting Laws. The Council of the Republic of Ecuador decrees the following:

Article 1. Those charged with enacting Laws shall petition the Holy See, that it would deign to establish four Apostolic Vicariates within the eastern territory of the Republic, namely: 1. Napi; 2. Macasii and Canelasii; 3. Mendesii and Gualaquirae; 4. Zamorae; and that these be entrusted to: 1. the Society of Jesus; 2. the Order of Preachers; 3. the pious Society of Salesians, or any other religious group; 4. finally, to the Franciscan heralds of the Gospel.

Article 2. They shall also implore that the Missions of the aforementioned three Apostolic Vicariates, mentioned in the preceding article, be under the protection and direction of the Congregation for the Propagation of the Faith, and that they be governed by special ecclesiastical laws, by which such sacred Missions are subject.

Article 3. They shall also request that the office of the Apostolic Vicars of the aforementioned Missions be granted to titular bishops, or those ordained for the missions in lands of infidels, but never to simple priests.

Article 4. To each of the three aforementioned Vicariates, a sum of six thousand Sucres (thirty thousand Libellae) is assigned annually, and to the fourth, three thousand (fifteen thousand Libellae), to be given annually. From these annual sums, expenses for the divine cult shall be deducted.

Article 5. From half of the tithes that belong to the Republic, funds shall be drawn for the purpose of providing this endowment, and whatever else is necessary to complete it; provided, however, that if there is not enough remaining from the portion that belongs to the Church to fully and completely fulfill the endowment, then so much shall be taken from the Republic's portion as is necessary.

Article 6. The College of those charged with enacting Laws shall promptly summon the highest Administrators of the Republic, and shall render an account to them regarding the execution of this Decree.

Given at Quito, which is the Capital of the Republic, on the 21st of August, in the year 1888.

President of the Senate Hall: AUGUSTINUS G-TJERRERO.

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President of the Hall where those deputed to enact Laws convene: REMIGIUS CRESPO FERAL.

Secretary of the Senate: EMMANUEL M. PALIT.

Secretary of the Posterior Hall: IOSEPH M. BANDEROS.

At Quito, from the Halls of the Republic, on the 11th of August, 1888.

We decree that it be carried out.

PETRUS IOSEPH CAVALLOS.

Minister appointed for internal affairs of the Republic, and for ecclesiastical matters.

IOSEPH M. ESPINOSA.

Note: — We have presented this, so that civil governments may see how to act with the Apostolic See.

[*Latin ed. p. 453*]

453 FROM THE HOLY CONGREGATION OF THE COUNCIL OF NEAPLES, CONCERNING MARRIAGE, August 18, 1888. Session 24, Chapter 1, On Reforms. SUMMARY OF THE CASE. On December 16, 1875, in Naples, in the parish of Saint Mark of the Palace, Conrad Micciarelli, having already completed the civil formalities, took Marianna Pagano as his wife. This woman, from the city of Naples, was 27 years of age; he, born in Ancona, was 42 years old, and had already had another wife, Leopoldina Huber, who, having suffered from consumption for five years, had passed away to a better life. After the sacred rite was celebrated, the bridegroom requested to go to Ancona, then to Vienna, and soon returned to Naples, where, both in the city and in the villa of Saint Paul in Belsito, they lived together for twenty-nine months. However, while the husband seemed easygoing and full of pleasantries towards other women, he was harsh and cruel towards his wife. Furthermore, there were well-founded suspicions that he was fostering illicit relationships with other women, and especially with a certain Marianna Vecchione. Unable to endure this life, and hoping for better times, Marianna Pagano returned to her father's home. She did not, however, abandon the path of virtue. And so, several months passed. Meanwhile, it happened that one day, when Marianna was speaking with her confessor about marital matters, he understood that there was something not normal in their conjugal relationship, and that he should investigate. Therefore, he encouraged the penitent to reveal everything to a pious and virtuous woman. Following this advice, Marianna revealed everything to Aloysia Caprioli, as well as to her own mother. Aloysia Caprioli testified under oath in the process: that she had

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questioned Marianna Pagano about the matters of her marriage.

[*Latin ed. p. 454*]

Concerning the events in NEAPOLITANA, she stated that she had discovered that her husband did not know what was due to every married woman. Furthermore, she became more certain, from the woman's responses, that the man was impotent, who had abused his wife's innocence, so that he could persuade her that the marriage had been consummated; while in fact, he had only used his finger on the first and second occasions, when he had intercourse with her in a natural manner. Indeed, after these two congresses, the man asked that she lie down, and that she do other things, which it is entirely shameful to recount. All of these things were related by Marianna to her mother and to the judge in the ecclesiastical court; to whom she indicated that, on the first occasions, when the man acted according to nature, she had felt no movement, stimulation, or pain, nor had she lost her virginity. However, in the subsequent violent acts, the man frequently used his hand; as a result of which, her entire person would change. Furthermore, the woman stated that, even in this manner, and after a brief contact with those parts of her body, there would be an emission of the man's semen, without her experiencing any sensation. Thus, in all, I can confirm that the marriage was not consummated, since her husband was never able to erect and penetrate her body. And when asked why she would permit such things, she replied that she had believed this to be the proper course. However, as the testimonies of the parties from the beginning are compared, Micciarelli states that the woman was already corrupted; hence it is explained why she experienced no difficulty in the first marital congress with her, and why there were no signs of blood. And he adds that he immediately reported this matter, or rather, his suspicion, to his uncle in Anconae, and then to others, that is, especially to Henrico Caracciolo, and to Iosepho Pastore, who in the process confessed that they had indeed heard these things from Micciarelli. Evarito de Belmonte, however, judges the matter to be false and slanderous. Moreover, there is the servant of Martino, who, concerning this point in question, says that she once heard Micciarelli say that he had not found Marianna to be a virgin, but rather that she was remitting herself to her mother. Finally, the same Micciarelli maintains that he only used his hand once.

[*Latin ed. p. 455*]

NEAPOLITANA 455 is accused of having acted dishonorably towards his wife; and that he abstained from repeating this act as soon as he realized that it was causing her pain. Therefore, he most openly and as an undeniable fact, affirms that he had rightly consummated the marriage. What is to be considered in this matter, and to whom more credence should be

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given, will be determined by the prudent judgment of the Most Reverend Prelates; with due attention to what is explained below. Therefore, having briefly related these conjugal relations, and with the best modesty possible, we must proceed to recount the subsequent events, according to the testimonies of both parties. Thus, Marianna Pagano, after having opened her heart to her mother and friend Aloysia Caprioli, and after having consulted with advisors, as she herself reports, before proceeding to bring a case against the marriage, she sought the opinion of two doctors, Gallozzi and Olivieri. This judgment was first affirmed in writing by these two doctors, and then in the ecclesiastical process under oath. Indeed, before the tribunal, Gallozzi declared, among other things: "After a careful examination, I found the female parts of Marianna Pagano to be intact, and I am of the opinion that there was no carnal union, and therefore, conjugal union was absent." If any injury could have been inflicted upon the woman, it occurred through the actions of the husband's fingers. This is what Doctor Caesar Olivieri affirmed under oath before the ecclesiastical court. Thus, confident in this favorable testimony of the doctors, Marianna resolved to challenge the marriage; and it happened that her husband, Micciarelli, was summoned by justice for fraudulent business dealings, and, being a fugitive and contumacious, was condemned by judgment to ten years of penal servitude. Furthermore, Marianna knew where her husband was hiding; but, through an extraordinary and uncommon act of piety and charity, she kept it secret, and, in order not to harm him, she delayed her cause for freedom. However, in the year 1884, a young woman who used to visit Micciarelli in his hiding place, committed an act of unjust prostitution.

[*Latin ed. p. 456*]

456 In Naples, he had sometimes not received payment, but the ministers of justice, having discovered this deceit, apprehended him and cast him into chains. Then, truly, Marianna undertook to carry out a plan she had long conceived, and which she had delayed for a long time out of piety, and she first went to the civil courts. The lay judge appointed three experts, skilled in their art, to examine both parties. These experts, after a special examination of the respective genitals of the two spouses, declared with one voice that the man was impotent or incapable of marriage; that the woman still bore certain signs of virginity; which excludes the consummation of marriage. Therefore, the civil court, after considering all things, declared that there was no marriage, as far as the civil forum was concerned. Then, truly, an ecclesiastical judgment was to be carried out by the Neapolitan Curia. The woman requested that she not be subjected to another physical examination. And the Most Holy Congregation, in a rescript dated September 19, 1887, decreed that "without a new examination of the woman, the report made by the expert physicians in the civil court shall be considered valid, as if it had been carried out in an ecclesiastical process, provided that

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the aforementioned experts confirm it and swear to it." Furthermore, each of the three experts confirmed their own report, and that under the sanctity of oath. As for the man, who had not required a dispensation from undergoing the examination, the ecclesiastical judge appointed five physicians: Caietan Sorgente, Michael Notarianni, Raphael Testa, Nicodemus Pacciotti, and Mark Aurelius Aurineta. These physicians, as the consultor canonist and the defender of the bond have explained, reported that Micciarelli appeared externally well-formed, but suffered from a certain weakness and inertia in his genitals; therefore, they considered his impotence to be more or less probable, and they declared that, in this case, it was not an innate and natural impotence, but rather an acquired one, resulting from premature and abusive use of venereal pleasures.

[*Latin ed. p. 457*]

NEAPOLITANA 457. The seventh witness, from both sides, also testified. And the witnesses brought forth by the woman recounted the best things about her conduct, and declared her incapable of lying; and, having heard her judicial testimony, they considered it valid, and confirmed it with further evidence. Conversely, they denounced the husband, not only immersed in a den of vices, and indulging in lewdness with his prostitutes, but also one who, at times, fraudulently borrowed money from his friends, squandering it on debaucheries and games; but furthermore, they asserted that, on account of his vices, he had contracted a defect of impotence, and that he was now widely considered to be impotent, and that he had also been dismissed from his position by his employer, Mariano Vecchione, and for this reason had been reproached by his friends on more than one occasion; indeed, that, due to his wicked conduct, and through such abuse, he had caused his former wife to die. Having omitted the other very serious matters which the witnesses brought forth by the woman testified to, it is rather necessary to recall that the seventh witness, produced by the husband, certainly did not recount better things about his spouse; for all confessed, with one voice, that he was addicted to women, devoted to games, and deceitful towards his friends, while conversely, they praised the wife, Pagano, most highly, or declared her to be exempt from all censure. Nevertheless, the witnesses brought forth by the husband considered him to be potent, especially for this reason, because they knew that he had been widely seen in the company of women. With all these things considered, the ecclesiastical judge, on July 28, 1887, pronounced sentence, in which he declared that the marriage was probably null, either due to the husband's impotence, or, if not certainly, at least not consummated; and therefore, he referred the woman's cause to the Holy See, and recommended it. The acts of the S. C. C. being transmitted, and since the woman was unable to bear the expenses of the ordinary proceedings, it was ordered, by dispensation from the Holy See, that the cause be treated economically.

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SYNOPTIC ACCOUNT

THEOLOGIAN'S OPINION.

He recounted in detail the testimonies of the witnesses, and the report of those skilled in the art of medicine, and concluded: After these things, no further legal inquiry is necessary.

[*Latin ed. p. 458*]

458 In Naples, it appears. For it is clearly established that Miceiarellius, having indulged in shameful acts from a young age and, for that reason, quickly lost his virility, was unable to procreate children with his first wife, and that he perhaps even employed that nefarious method with her in order to satisfy an insatiable lust. Indeed, the aforementioned unhappy woman declared him to be impotent, and, being a woman of flourishing beauty and youth, and lacking support from her relatives, she died. Therefore, it seems that no impediment exists, and that the marriage between him and Marianna Paganoirritum should be considered valid and fruitful. For, regarding his impotence, numerous professors of medicine and surgery unanimously and without hesitation declare: and they raise no doubt whatsoever concerning the virginity of the wife, Paganoirritum; but rather, they affirm it as certain and manifest. If, however, a judgment of nullity were to be pronounced, it would be necessary to consult the Most Holy Congregation regarding a dispensation for a marriage that is valid, but not consummated, allowing the man to enter into other marriages without the permission of the Holy Congregation. For so grave, urgent, and numerous are the reasons for granting such a dispensation, that no example of a dispensation so generously granted to such and such just causes seems to be more deserving. *[Signed] VoruM CANONISTAE.*

It should be noted here that the proceedings of the process were completed in a commendable manner, both to demonstrate the nullity of the marriage, with respect to the husband's impotence, and to present the reasons for requesting a dispensation from the marriage, if it were valid, but certainly not consummated. Therefore, it was deemed necessary to gather, in the same order, more convincing arguments from the same acts, until it was proven whether the marriage was valid, based on the grounds of the husband's impotence, and whether just reasons existed for requesting a dispensation. In order to proceed in an orderly manner with respect to the first part, he proposed to resolve three doubts in this examination, which, according to canonical doctrine, must be converted into certainty, namely: whether it is established from the judicial acts that the...

[*Latin ed. p. 459*]

NEAPOLITANA 459: Firstly, whether they have lived together for a suf-

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ficient time to fulfill the purpose of marriage; secondly, whether it can be established that they could not have consummated the marriage due to the husband's impotence; thirdly, whether it can be established that this impotence was either antecedent and permanent, or, at least, in relation to Marianna. Regarding the cohabitation, neither spouse denies having lived together, indeed, both affirm it under oath, and that they have endeavored to fulfill the marital duties. Since the spouses themselves, under the sanctity of oath, confess to a long period of cohabitation and marital relations, it is undoubtedly clear that the first question is resolved, especially since they both do not have the same goal in mind, and one of them even expresses a contrary opinion. Regarding the lack of consummation, the Consultor states that, according to the Constitution *Dei Miseratione*, the instructions of the Sacred Congregation of the Council issued on August 22, 1816, and the Decrees, the following seem to be required to prove the lack of consummation of the marriage: namely, a confession made under oath by both spouses; testimony given by seven witnesses; an examination of the bodies; and a three-year trial period. After these, what the judicial proceedings provide for each of these conditions will be examined. Regarding the woman's confession, it should be noted that the Consultor considered that not only did she herself, and all of her witnesses, but almost all from Aversa, spontaneously and with the greatest possible esteem, testified that Marianna Pagano was a very pious and modest woman, indeed, innocent, simple, and devoid of all malice; therefore, she was not aware of the marital act, either before or after the marriage; which, according to the advice of a confessor, she learned from a certain matron, a cousin, after a long period of separation. Then, the Consultor recounted the words of the woman, by which she indicated that the marriage had not been consummated. Then, turning to the confession of Mr. Micciarelli, he said that it was necessary, above all, to declare the indignation of his own person, and of almost all of the witnesses on both sides, indeed, even of the defender of the marriage, against the unjust husband, who, as if afflicted by a...

[*Latin ed. p. 460*]

460 In Neapoli, a woman, in order to avoid the penalty for impotence, asserted that she had found a woman who, from the very first intercourse, had proven herself incapable. Indeed, it is not surprising that Micciarelli openly denies the consummation of the marriage, lest he admit to his own impotence; moreover, he adds that he was led to this denial not only by the stigma of impotence, but by more serious reasons. However, since we are dealing with a virgin, and indeed a most chaste virgin, how are we to interpret the words of a man of this sort, who led a youth filled with wickedness, and an old age marked by deceit and falsehoods, ending in disgrace? Having dismissed the calumny, what remains but the explicit confession of the lack of consummation? But let us proceed further, for

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the witnesses, and both of their hands, openly suggest what judgment we ought to form of this man. For on the part of the woman, they unanimously proclaim the virtues of Marianna. What now of the witnesses presented by Micciarelli? The canonist observes that he did not present close relatives, nor affines, nor, indeed, the friends of either spouse, or at least those who had certain knowledge of either of them; but rather, he presented many who, while some refused to testify against the defender of the marriage, others declined to appear in this trial, while the rest, if we except two, either know only the man, or have learned about the woman only from his mouth. However, even though these witnesses admit that Micciarelli's master was given over to the vice of lust, by this very admission they attempt to dispel the suspicion of his own impotence, and they declare themselves to be ignorant of the consummation, or lack thereof. Regarding the examination of the body, the consultant reported that the account was taken from the woman's own mouth. She herself recounts that she was subjected to an examination by two experts skilled in the art, who, with one voice, proclaimed her integrity. These testimonies, two years later, were both confirmed under oath before the episcopal court; furthermore, Gallozzi added that he had examined Marianna's body not once, but twice, and had found evidence of her physical virginity; and Olivieri, confirming his written deposition under oath, declared that he was persuaded of it.

[*Latin ed. p. 461*]

In Naples, it is stated that she has never been known by a man, and still enjoys physical virginity. Furthermore, when a civil lawsuit was initiated concerning the annulment of the marriage contract due to the husband's impotence, a judicial examination of the bodies of both spouses was entrusted to three other experts: Vernicchi, Laccetti, and Cacciapuoti. Regarding the lady Pagano, they declared that, as she had vowed, and confirmed with the sanctity of an oath before the ecclesiastical judge, Micciarelli had never been able to consummate the marriage during the entire period of eighteen months, and that lady Pagano remained a virgin. However, it cannot be said that the examination is complete unless certain conditions are met, namely, whether midwives or doctors were present, or whether a bath was taken or absent. No one should avoid the prescription that midwives are to be used rather than doctors in this matter, not in order to obtain a more valid and wise judgment, which indeed a dreamer does not receive, but only to protect modesty; and in this matter, the civil judge is not overly concerned, who employs not more honorable, but more effective and safer means to ascertain the truth. Moreover, it should not be overlooked that science has repeatedly declared that a bath is useless in destroying, if it exists, any physical or chemical binding agent; and conversely, a scientific examination cannot be deceived by any binding agent. Finally, it must be noted that this examination was not ordered by the Church, which certainly

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would have carried it out through the proper legal channels, but by the civil authority; and these findings have weight in this process only by virtue of a papal rescript, just as if they had been carried out by the Church itself. With these things established, it is clear that no further arguments or investigations are needed to prove the lack of consummation. Five experts, indeed of great renown, unanimously declare that lady Pagano is still a virgin, based on the virginal conformation of the labia majora and minora, the absence of any kind of caruncles, and finally, the presence of the hymen.

[*Latin ed. p. 462*]

462 In Neapoli, tamen, ut non videatur frivolitatem proferre, cum argumentum quod defensor putavit esse momenti magni, de significationibus hymenae aliquid dicendum sit, immo, quid ipsi periti dixerunt, exponendum. Omnes hi, nemine excepto, unanimiter asserunt ne de illis scarificationibus verbum facere oporteat. Tamen, causas huiusmodi scarificationum referunt, et digiti introductionem et operam, quae vere non defuerunt, ipsa Pagano firmante, determinantes. Et ipse Micciarelli fateretur una vice tetigisse manu pudenda mulieris. Nonne risum tenendum nobis est? Tam pudicus effectus est vir Micciarelli, ut una vice tantum manum ad partes mulieris applicaret? Et tam sensibilis mulier ut superficialiter manu tacta de gravi dolore quereretur? Sed magis praestat de causa inconsummationis disserere, quam in viri impotentia ponere, non dubitamus. De inspectione locutus est consultor, dicens: "Duplex inspectio ex actibus processualibus nobis praebetur, altera a tribus peritis, Vernicchia, Laccetta et Cacciapuoti, civilis magistratus iussu expleta, altera a medicis Sorgente, Notarianni, Testa, Pacciotti et Aurineta, Curiae archiepiscopalis mandato confecta. Huius tam magni Senatus unum idemque iudicium; nempe exteriora genitalia domini Micciarelli esse fere perfecta, quamvis manifeste appareat esse inepta ad copulam. Deinceps notandum quod omnes exploratores, quamvis qua maiori poterant modestia et moderatione tum factis, tum adloquiis, erectionem, vel quasi, provocare, sed frustra. Omnes denique confitentur desumi non posse ex conformatione partium absolutam ac perpetuam impotentiam; non improbabilem tamen adesse impotentiam accidentalem ex abusu veneris, vel ex longo eius usu, vel ex improba in copula positione, vel ex aliqua morbi effectione. Addunt postremo hanc probabilitatem impotentiae in certitudinem verti si explorata ipsa mulier, incorrupta inveniatur. Mulieris incorruptio iam manifeste apparuit; videamus, ait consultor, an ex processu constet causas accidentalis impotentiae, quas referunt periti, virum istum tetigisse."

[*Latin ed. p. 463*]

NEAPLES 463. The very same Micciarelli, having boasted before the physicians, when he was only thirteen years of age, that he had already offered sacrifices at the altar of Venus; to which the physicians replied: "He

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who begins early, ends quickly." Witnesses, compelled as it were by the seventh commandment, attest the very same. Therefore, it is no surprise that, according to the account of a woman, he always acted contrary to justice and decency, and that he never entered the woman's body, but rather emitted his seed outside and hastily. "I have learned this," said the consultant, "from the documents, that the aforementioned Micciarelli suffers from impotence, making it difficult to achieve a union that, unless natural and complete, is undoubtedly accidental and relative. Now, let us see if this impotence is antecedent and permanent, which is indeed required by the best of laws, so that the marriage may be declared invalid and null. And concerning this antecedent condition, Micciarelli himself asserts that he had no children with his first wife, although he had lived with her for seventeen years, and had carnal relations with her, attributing the cause of this sterility to a previous illness. But let us hear the truer cause from Father Joseph Fasulo, a Theatine, pastor of the church of St. Paul, who knew Micciarelli from the year 1859, before he took his first wife, named Huber, and who often saw the couple after their marriage. He reported that the first wife believed her husband to be immoral and impotent. Having considered all these things, there is no doubt that the impotence, of which we are speaking, is antecedent. Nor does it matter that almost all the witnesses affirmed that, even before, and indeed after the physical separation from his wife, the aforementioned Micciarelli had relations with other women; because this very extraordinary frequency of acts of lust, I say, this very eagerness to approach this woman and then that woman, demonstrates and confirms the very impotence; and no one can certainly affirm that what happened to him with other women did not happen with his wife. The same witnesses, brought by Micciarelli, were not afraid to assert that the aforementioned Micciarelli had spent a great deal of money...

[*Latin ed. p. 464*]

464 In Naples, a certain Micciarelli, due to his incontinence with women; some say that he spent up to sixteen thousand livres, offered to him by friends, to defend himself in a criminal trial, having squandered everything in this shameful way of life. This woman, who was not certainly joined to him in chaste conjugal love, but rather offered her body to him in abundance and for hours, does not cry out or complain about the impotence of his genitals, but only about his impotence. And indeed, when he was absent, she, having nothing else to gain from him, handed him over to the civil authorities. Let us now see if Micciarelli's impotence is also permanent. But this extreme question must be briefly examined. You have heard that he preceded his first marriage, which lasted for seventeen years; nor was he cared for during the five subsequent years of his widowhood, so that he might experience the same thing in the eighteen months during which his second marriage lasted in cohabitation: and from that hour, thirteen years

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have passed. What hope is there for the future? Experts who have examined his body are all agreed that he has an accidental impotence, which is sometimes curable, but only if the one who suffers from it does not exceed the age of twenty-five or thirty; but Micciarelli is already burdened with more than twice that number of years, having been born in 1833. Regarding the three-year trial, which is required as the ultimate condition, not a word. For it is enough to cite the decree of Celestine III in Decret.: "It is necessary to grant indulgence to those who are naturally frigid, so that they may experience the nuptial union. We, in the present consultation, believe that... if the frigidity cannot be proven, they should cohabit for three years." But it has been proven to satiety after eighteen months; therefore, there is no objection to the fact that the three years have not yet been completed; indeed, if there is truly impotence, neither is it permissible, nor should such a trial be allowed, as Guttier, Pont., Tamburin, and others say.

[*Latin ed. p. 465*]

NEAPOLITANA 465 It does not seem that a woman can justly object to having lived together with her husband for a long time, in order to obtain a judgment. For we have already discussed the reasons for such acquiescence. However, it is noted that Coscius teaches on this matter in book 1, *De separ.*: "If the wife is a virgin, and it is established that she remained a virgin, even after a long time, she can claim her rights and deserves to be heard." Having considered all these things, it seems that the spouses who have cohabited for a sufficient time, and have fruitlessly attempted to consummate the marriage, due to the husband's antecedent and perpetual impotence, cannot be recalled to their former state, and therefore the marriage entered into between them is invalid and null. Regarding the causes of dispensation, the consultant stated: "Among the causes of dispensation, the most prominent is the grave, indeed most grave, doubt concerning the validity of the marriage. Unless the husband's impotence is evidently proven, it is nevertheless so probable that the Supreme Pontiff may consider it true; and this is sufficient, as Ursaya, De Luca, etc., say, to be warned to grant the grace of dispensation." Another cause of dispensation is no less serious, namely, the difference in character and morals, and the incompatibility of souls. The lady Pagano, as all those who were called to testify in this case asserted, was virtuous, docile, modest, and pious; while Micciarelli, on the contrary, was prodigal with the good qualities of others, given to lust, insolent, cruel, and contemptuous of his own and others' honor, cruel to others and to himself; she loved, he scorned; the woman even endured the shameful embraces of her husband, lest she appear to resist his will; the husband, twisting the more delicate fibers of the feminine heart, before the woman's eyes, praised another woman, and even commanded his wife to receive the woman he loved in the house, in his company, at the table. And yet, the most pious Marianna endured all

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things, accepting all as if from God. But this way of life cannot be endured for long, lest the health of the soul and body be lost; and the most patient woman, already weakened in health, with a heart bravely agitated, sought peace and strength elsewhere, in the bosom of her mother. Furthermore, a new and more serious cause of incompatibility is present, as stated in the new and Acta, Tom. XXI, fase. CCXLVIII, 30.

[*Latin ed. p. 466*]

466 In NEAPOLITANA, quae, ut opinor, sufficit et superat, ad illud ut omnimodam spem reconciliationis toto coelo expandat; hae 2 sunt infames calumniae, quibus Micciarelli ausus est immaculatam viri gloriam, et venerandum familiae nomen maculare. Hoc improbum genus defensionis, quamquam ab omnibus testibus utriusque partis vehementer repulsum, nisi odium, fere aversionem invincibilem peperit. Quae omnia, revera prospicientes, omnes testes, et utraque septima manus, nemine discrepante, affirmare non dubitant sponsos omnino irreconciliabiles esse; si tamen depositionem Cleomenis excipias, qui debitis penitus submersus, et vinculisque coniectus, poenam soluturus duodecim annorum, omnia alia subsidii spe destituitur, dempto uxoris censu trium libellarum millium.

ANIMADVERSIONES MATRIMONII. Refert imprimis sententiam Curiae Neapolitanae, qua dicitur matrimonium in themate fuisse nullum, vel saltem eius valorem fuisse dubium ratione antecedentis manifestae et probabiliter perpetuae impotentiae viri: at certo non fuisse consummatum. In recitatam curiae archiepiscopalis sententiam concedunt lectissimi consultores, theologus et canonista, ait Consultor. Porro egregius theologus concludit: « Nullum dubium videtur esse, quin matrimonium inter ipsum Micciarelli, et Mariannam Pagano irritum, et nulliusque effectus censeri debeat... Quod si nullitatis iudicium fortasse proferri non volit, dubio procul consulendum esse Sanctissimo pro dispensatione a matrimonio rato non consummato, vetito Micciarelli transitu ad alias nuptias. » Consultor vero canonista: « In dubium, inquit, revocari non posse videtur, sponsos per sufficiens tempus cohabitasse, et frustra copulam tentasse ob viri impotentiam antecedentem et perpetuam. Et ideo irritum ac nullum esse matrimonium inter ipsos initum. » Et subdit: « Sole clarius apparet omnino resolvendum esse hoc vinculum, si adsit, et ideo consulendum esse SSmum ob dispensationem matrimonii rati et minime consummati. »

[*Latin ed. p. 467*]

NEAPOLITANA 467 Nevertheless, the defender states that the matters are certainly not trivial, whether one considers the value or the consummation of the marriage in question. I do not seek to delve into the intricacies of the law, but I present the facts, which, viewed either directly or indirectly, or at the very least, with the clearest possible judgment, demonstrate that

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the marriage was either null from the beginning, or was never consummated, and that there were grounds for a dispensation. I will first present the facts concerning the alleged nullity of the marriage, and then those concerning the lack of consummation and the reasons for a dispensation. I preface this by stating: first, that of the eight experts in the art of healing who examined the body of Micciarelli, none dared to declare certain signs of impotence; second, that they did not assert that he was already impotent, but rather that some only conjectured it based on indications that were either inconclusive or not entirely certain. Indeed, the physician Notarianni, upon hearing that the man had been given to Venus at the age of fourteen, exclaimed: "He who begins quickly, ends quickly." However, this does not always occur. Furthermore, several individuals, among whom were three doctors appointed by the secular tribunal, testified that they found a certain lack of vigor in Conrado; but this man was of an age of fifty years and over, and had been imprisoned. In addition to these, the aforementioned experts, appointed by the secular magistracy, state: "However, we do not have direct proof of this abnormality, nor can it be obtained, as anyone can see." Finally, all the archiaters who conducted the examination state that, if they attribute the impotence of Micciarelli to anything, it is to his virginity from the Mariannae Islands. However, such a circumstance is not certain, nor does it necessarily imply either absolute or relative impotence. Moreover, the examination of the body of Micciarelli was conducted with such superficiality that, although the Instruction issued by the Sacred Congregation of the Council on August 22, 1840, expressly states: "Each expert shall submit a written report," only five doctors, appointed by the archiepiscopal court, testified orally about the signs of impotence. I have considered it necessary to present the very words in which the expert doctors presented their judgment, so that the Most Reverend Fathers may have them before them.

[*Latin ed. p. 468*]

468 In Naples, it is as if one could see with one's own eyes how absurd it is to declare a marriage null on the basis of the husband's impotence. Furthermore, the physicians either explicitly deny the husband's impotence, or they merely state that it is possible. Indeed, as Barbos notes, in *Voti Clecisivi*, vol. 1, no. 93, "the proof must necessarily conclude, and not merely be possible." And, as the same Barbos observes, in vol. 55, nos. 29 and following, "a doubtful, ambiguous, or equivocal proof is of no consequence," and "to the extent that such doubt and ambiguity exist, the proof should be interpreted against the one offering it; the interpretation should be made against the one who is trying to prove something." Nor does Marianna Pagano offer a better argument for the consummation of the marriage, claiming that it was demonstrated by an examination performed by experts on her person.

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First of all, I observe that Marianna, who obtained a guilty verdict, is the most unfortunate of people, having been examined by eight experts, all of whom were judicial, three lay magistrates, and five appointed by the archiepiscopal court, and yet, despite claiming to be the most obedient to the laws of the Church, she vehemently refused to allow herself to be examined by three midwives, as required by law. Marianna, who should come prepared, rejected all examinations, except for those performed by two medical friends and two attendants at the order of the secular judge, under the pretext of modesty and convulsions, as if it were more shameful for a young woman to be examined by midwives than by doctors. This method of proceeding, I believe, is intended to instill fear in those who are questioning, so that no suspicion may arise.

Now, regarding the examinations in which Marianna placed her trust, all the judicial doctors remained conspicuously silent regarding the multiple signs of a corrupted or untainted hymen. They all omitted the warm water bath, which is always necessary to reveal deceptions, and especially in the present case, to measure the sacrifices made to the hymen. I recall the Parisian case, discussed on July 21, 1888, which is very similar. There, the doctor Brourdel, after examining the body of Caroline d'Oliveira, without using a warm water bath, attributed the sacrifice of the hymen to the touch of a finger, and Caroline was declared...

[*Latin ed. p. 469*]

NEAPLES 469: The maiden declared her virginity; on the contrary, the doctors Le Bec and Ferrand, after a preliminary examination, testified that it was not probable that the marriage was unconsummated. Furthermore, the most serious thing is that the doctors, having examined the body of Marianna, did not attain the truth in the slightest. Indeed, Conrad testifies under oath: that he believed her to be not a virgin in the first intercourse, and that he threatened to send her back to her mother. And do not say that Marianna's defloration was a fabrication invented by Conrad, after he himself was accused by his wife of impotence. For several witnesses testify and confirm that they had heard this before. Marianna, who, if she were telling the truth, could most easily demonstrate the unconsummation of the marriage through midwives, also mentions the reproaches and rebukes that she suffered from Micciarelli. But how could a wife endure these acts of an impotent man for eighteen months without any respite? Furthermore, what is more foolish than to object to the adversary that if he denied it in words, he could not proceed further, than to object that he so fatigued his former wife with ferocity and impotence that she ended her life prematurely? This narrative, however, is not in accordance with the truth, as Henry and the Caracciolo family attest in their sworn depositions. Marianna affirms under oath that the marriage was not consummated; this, however, Conrad denies under oath. The controversy is decisively resolved

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by the first principle concerning frigidity and impotence. — there — If the wife, after a year, or even six months, proclaimed to the bishop, or his emissary, that she did not know him, you, the husband, affirm the contrary; you are to be believed, because you are the head of the woman; for if she wished to proclaim it, why did she remain silent for so long? She could have learned it quickly and in a short time, if she could have intercourse with you. But if, immediately after the marriage, within a month...

[*Latin ed. p. 470*]

470. In Naples. "If a woman has cried out to the bishop, or to his representative, saying: 'I wish to be a mother, I wish to have children, and for that reason I have taken a husband,' but the man she has taken as a husband is of a cold nature, and is unable to perform that for which she took him; if she can prove it, through a just judgment, they can be separated, and she, if she wishes, can be married in the Lord." It is worth remembering that Marianna did not only sleep with her husband for eighteen months, but afterwards remained silent for seven years, and only then did she accuse her husband of impotence, when he was imprisoned, and she was unable to defend herself. Eminent counselors, a theologian and a canonist, believe that in this case, more credence should be given to the wife than to the husband, because the testimony of the witnesses elevates Marianna's reputation to the heavens, while it casts doubt on the husband's integrity. However, note – first – that Marianna is a native, while Micciarelli is a foreigner, and furthermore, she enjoys a fortune and possesses ample wealth, while he has been afflicted by misfortune and laments an unhappy life in prison. Note – second – that eight of the witnesses, brought forward by Conrad, were rejected by the judge, at the insistence, not only of Marianna's advocate, but also of the defender of the marriage. It is truly astonishing that the defender of the sacrament, the priests Carmel Nappi, and Angelo Crisci, of the diocese of Nolana, were rejected by the husband, because they are from a different diocese, and their testimonies are amply supplemented by the testimony of witness number 4, and for no less frivolous reasons, six other witnesses called by Micciarelli were rejected. Furthermore, this defender of the marriage is so forgetful of his duty that he was rebuked by the judge for uttering a scandalous and defamatory falsehood against Marianna, saying that she was found to be defiled in her first intercourse. Not only is the officious defender of the marriage praying against the husband, but also the advocate, appointed by the husband himself, is colluding with Marianna. The situation proceeds to the point that, being confined in prison, he needs a procurator appointed to him by the judge, who, as has been said, rejects the witnesses, or who do not even appear.

[*Latin ed. p. 471*]

NEAPLES: With his own authority, Micciarelli replaced him. And the

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witnesses, passing through fire and water, were subjected to so many irrelevant questions as the patron of the Mariannae Islands desired. Having completed the examination of the witnesses with these additions, it is no wonder that Mariannae is praised, while her husband is harmed by many. It is surprising, rather, that, despite the evident facts, they are compelled to admit that Conrad truthfully recounted the events, both concerning Mariannae's defloration and concerning the consummation of the marriage, which is quite sufficient for us. Since it is not established that the marriage remained incomplete, it seems superfluous to speak of the reasons for a dispensation; nevertheless, he observes that Mariannae did not die because of the husband's impotence, nor because of aversion or cruelty, but because of the husband's apostasy and loss of faith, and that, through Mariannae's relatives, that is, her mother and brothers, it was prevented that the custom of conjugal life be restored to the individual. Given these circumstances, the consultant concluded, and proposed the following questions. I. Is there proof of the nullity of the marriage in this case? And to what extent? II. Should the matter be brought before the Most Holy [See] for a dispensation regarding the marriage, which was celebrated but not consummated in this case? The answer, as if falling directly into the abyss, is given by the advocate: Negatively to both. With these observations, the proposed questions must be clarified. Question I. Is there proof of the nullity of the marriage in this case? And to what extent? Question II. Should the matter be brought before the Most Holy [See] for a dispensation regarding the marriage, which was celebrated but not consummated in this case? RESOLUTION. After deliberation, the Sacred Congregation decided, on August 18, 1888, to respond: To I, it will be provided in the second [part]. To II, affirmatively.

[*Latin ed. p. 472*]

472 MECHLIN. MARRIAGES. August 18, 1888. Session 24, chapter 1, Concerning Reforms. SUMMARY OF THE CASE. Irma Vermeiden, born in Brussels on November 13, 1861, validly contracted marriage in the sight of the Church on June 7, 1881, with Ernesto Luciano Haussens, of approximately the same age, and lived with him until November 1884; at which time, she claimed that the marriage had not been consummated due to the prior impotence of her husband. However, the non-consummation of the marriage was confirmed by the doctor Eugenio Iansens, who, at the request of Irma's father, conducted a physical examination of the woman on April 2, 1885. Subsequently, having obtained, as they say, a civil divorce by mutual consent, the woman petitioned the Metropolitan Curia of Mechlin, requesting that the nullity, or at least the non-consummation, of this marriage be declared. However, initially, the husband refused to appear before the ecclesiastical judge; the woman, however, declared, "that it was so repugnant to her to submit to another physical examination, that she would

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not admit any doctor to this, except B. Thiriaux, the doctor of her father;" to which the judge deemed it necessary to consent. Therefore, after hearing the woman and her seventh-hand witness, as well as the testimony of the aforementioned doctor Thiriaux and another doctor, Iansens, the Archbishop rendered a judgment on February 25, 1887, in which it was stated that the marriage, in this case, had never been consummated, and that there were very serious reasons for granting a dispensation from the valid but unconsummated marriage. To these reasons, another no less serious one was soon added: for on the following day, that is, February 26, Irma, influenced by impious counsel, subjected herself to a civil marriage contract with another man in London. However, the case, before the Supreme Sacred Congregation, under the usual formula of doubt, whether to consult with His Most Holy Eminence, etc., received the following response: "Let the proceedings of the case be extended and completed, according to the instructions to be given by the Defender of the Marriages by virtue of his office."

[*Latin ed. p. 473*]

MECHLINIEN. 473 Quae instructio sequens fuit tenoris: « 1. Diligenter curandum est ut, per omnia possibilia, constet de iudicio edito a nonnullis medicis ad finem anni 1884, cum Emesti corpus explorabant; nec non ut ad examen adducantur tum medici praedicti, tum alii, quos Ernestus consuluit durante coniugum cohabitatione. » < 2. Compleatur testimonium per examen consanguineorum, affinium vel amicorum Emesti, quos indicabit ipse Ernestus, si ad hoc inducere queat a matrimonii defensore. Neque omittatur, si possibile sit, examen domini Bara ac Emesti propinquorum medendum, quos omnes acta processus de re instructus renuntiant. > Coherenter ad haec, Rmus Archiepiscopus processum compleri sategit, verumtamen haud omnino prospero exitu. Sane, peculiaribus suis litteris diei 14 Aprilis huius anni, haec edocebat: « 1. Omnia tentata fuisse, ut iuxta instructiones supra relatas, processus compleatur; omnia quoque media adhibita fuisse, ut comparerent, qui iuxta instructionem citandi erant; sed inane; tantummodo scriptas declarationes obtinere licuit a medicis Thiry et Desinet, cognatis Ernesti Haussens, ut patebit ex ipsis actis, adeo quidem, ut verum nihil amplius fieri queat. » « 2. Quae modo collecta sunt, eo quidem tendunt ut probent virum non laborasse impotentia perpetua et insana bile; verum nihil probant contra inconsummationem, testimonio oratricis, septimae manus ab ea inductae et medicorum, rite probatam. » « 3. Probe quoque notandum est nostrum iudicem delegatum selegisse ex parte feminae testes, qui ipsi videbantur magis probi ac fide digni; admisisse testimonium medici Janssens, cum hic medicus magna fruatur celebritate; aegre quidem admisisse medicum Thiriaux, quum ipsi praeferendus videtur medicus Curiae Archiepiscopali notus, ad quod actrix consentire noluit.

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Attamen quod haec spectat, limites accu-

[*Latin ed. p. 474*]

474. The Mechlin case. The most prominent defender of marriage before the Sacred Congregation is said to have asserted that Monsieur Thiriau, according to the bonds of our court, was estranged from religion. The Mechlin defender did not say this in his observations; but these are his words: "I do not wish to impugn the science and honesty of the second doctor (Thiriau), which the actress has acquired; however, I believe him to be less religious." Just instructions were given to the doctors themselves, Ernesti, from whom we could only obtain written testimonies, but it should be noted that these are not more religious, indeed, some even claim that they are hostile to religion.

"It must be admitted that the excessive haste of Madame Vermeulen, who remained silent for three years regarding the manner in which her husband behaved towards her, led to a premature attempt to obtain separation and divorce. However, this is not so much attributable to the woman as to her husband and his advisors.

"Similarly, the fault for the new civil contract, entered into without awaiting an ecclesiastical judgment, cannot be entirely attributed to the woman. Moreover, she is greatly distressed by the situation in which she lives. In her recent letters to me, she earnestly requests that I take care to send this supplementary process to the Holy See as soon as possible, so that she may once again obtain peace of mind and tranquility of conscience."

"Therefore, we have attempted to obtain from the doctors designated in instructions no. 1, both their written judgment and their appearance before this court for examination. The documents which I now send show that we have only been able to partially satisfy this request. Similarly, we have attempted in every way possible to comply with what the Holy See prescribes regarding the testimony of a seventh witness on the part of Ernesti-Haussens, and regarding the oral examination of this very person, but without success; indeed, Ernestus himself had already, as is stated in the previous documents, been summoned again and again, and in the most recent letters from the judge's delegate, he did not even deign to give an answer. After receiving the instructions, we hoped to obtain something through his mother; but all was in vain."

[*Latin ed. p. 475*]

"Neither was the Lord Bara able to be brought forth, concerning whom instructions were given, to testify in the cause, either orally or in writing, stating that he was unable to act in this matter, since he was the counselor of the woman in the process before the civil tribunal.

"If all things pertaining to the law were not completed in this process, it must be considered that almost all those who were obligated to appear

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in this cause were from the ranks of those so-called liberals, who are least inclined to obey the voice of the Bishop, and against whom, indeed, we have no means of coercion.

"Finally, I earnestly pray the Most Eminent Fathers of the Sacred Congregation, that they may remember something about the impotence of Ernest Haussens, and that they may request from the Holy See a dispensation from the marriage that has been consummated but not consummated. This lack of consummation is clearly established in the initial documents of this process, and nothing to the contrary is presented in this supplement. Therefore, I again most earnestly implore the Sacred Congregation to deign to request and obtain the requested dispensation from the Most Holy Lord, and thus to hasten to restore this miserable woman from the state of condemnation to the life of a Christian."

SYNOPTIC DISCUSSION

DEFENSE OF THE WOMAN.

The defender of this cause first attempts to demonstrate that the acts of the process were entirely complete, as far as possible, according to the instructions given by the defender of the marriage ex officio. This, indeed, is already evident from the letter of the Most Reverend Archbishop mentioned above.

Furthermore, the same defender contends that it is beyond doubt that the marriage was not consummated in this case. He derives this from:

1. The testimony of the woman, who, after taking an oath, affirmed that the marriage was not consummated. The orator maintains that this sworn testimony should be entirely believed. For:

1. It cannot be presumed that those who flee to the authority of the Church, and while striving to avoid sins, are stained with the crime of perjury, as is evident from chapter 34 of De iureiur., where the matter is left to their conscience.

[*Latin ed. p. 476*]

476. MECHLINIEN. The oath of a woman has always held such weight that, according to the Constitution of Innocent XI, the Roman Pontiff, whenever the cause for the declaration of nullity of a marriage arises, and a dispensation is to be granted in the court of penance due to the lack of consummation, it is considered, as Corrado testifies in *dispensationes*, book 6, chapter 7, number 21, after removing all bodily inspection.

2. Faith must be given to the woman because of her religion, which not only all the sworn witnesses of the preceding inquiry affirmed, and the Most Reverend Archbishop of Mechlin, in the letters mentioned above,

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confirms, but moreover, the advocate states, is shown from the pilgrimage that the woman undertook, going to Rome for this purpose, so that she might more quickly attend to her conscience; and from a letter sent to the Most Eminent Prefect of the Sacred Congregation of the Council, in which, among other things, she writes: "May Your Eminence know that I am a Catholic, and I ardently desire that you grant me permission to complete the marriage before the Church, through which alone I can consult my grave condition... I went to Rome for this purpose, so that I might inform Your Eminence more certainly of my case; and I confess that I have presented the whole truth. Please consider my unfortunate situation and quickly relieve me."

Subsequently, the advocate argues that the lack of consummation of the marriage is deduced from the integrity of the woman. Indeed, if two doctors, Janssens and Thiraux, having first taken an oath, either in writing or verbally before a judge, after a bodily examination, reported on the perfect state of the woman's virginity. And that the testimony of these doctors should be heeded, the advocate continues, is taught by the Most Reverend Archbishop himself. For, in the aforementioned letter of April 14, 1888, he wrote of Doctor Janssens: "Since this doctor enjoys great renown," and he observed that the defender of the marriage of the Mechlin Curia ought to have affirmed: "I do not wish to impugn (his) knowledge and integrity."

Furthermore, the advocate contends that the lack of consummation of the marriage can be deduced from the impotence of the man, which, according to his own testimony, is demonstrated by two doctors of the same man, namely, his uncles, Desmet and Thiry.

[*Latin ed. p. 477*]

MECHLIN. 477 Therefore, the advocate concludes, based on the authority of four experts in the field, two of whom examined the body of the man and two the body of the woman, it is most clearly established that the marriage was not consummated. That one must adhere to the judgment of experts in the field is widely taught by canonists; Cardinal Tusch states: "Experts in the field are considered mixed judges and witnesses; they participate in both aspects, and the judgment rendered by them is not a testimony. Therefore, eminent doctors hold that there is no room for fear of subornation in them." (Lit. P. conci. 285 n. 1. 2). And according to Gratian: "One must adhere to the sworn testimony of experts, and according to their opinion, even if the parties contradict, the judge must render judgment." (Discept, forem, cap. 572 n. 48 etc.). The Abbot agrees in chapter *Proposuisti* 4 de proh. n. 3. Furthermore, the most serious argument for virginity is derived from the existence and integrity of the hymen, which cannot exist in a corrupted woman. This is confirmed by the authority of numerous authors of anatomy and forensic medicine. Thus, Zacchia, *Quaest. Med. Leg.*, book 4, title 2, question 1, n. 1: "Many things are brought forward

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by which, when present, the integrity of virginity cannot be doubted, but above all, it seems to be an infallible and inseparable sign of virginity that the hymen is present, namely, a thin membrane by which, when present, it is sufficiently and clearly known that the woman is unblemished." Similar statements are found in Bartholinius, *Inst. anathomiae*, book 1, chapter 31; Rudel, *Anatomia descrittiva*, vol. 2, page 324; Toihmeyer, *Inst* med. legal, chapter 4, question 3; Barzellotti, *Quest. di medicina legale*, vol. 1, book 1, chapter 5, etc. But furthermore, the lack of consummation of the marriage is deduced from the testimony of seven witnesses. For all the witnesses agree that Ernest's impotence was notorious, and that this was the true reason why Ernest himself gave his consent to the civil divorce. Thus, Matildes Van Hoorde testified that she herself had learned from Ernest's mother, in a private conversation, her conviction about this.

[*Latin ed. p. 478*]

478. MECHLIN. concerning impotence. Furthermore, the Dean of Brussels affirmed that the impotence of the man was well known in Brussels, and that it was also well known that this same impotence was the true cause of the divorce. Likewise, Felix Tasson, Hippolytus Du Sarte, Charles Tilière, J. Van Langenhove, and A. Cauler testified that the divorce was the result of the man's impotence. From all of these things, the advocate concludes that there is no doubt about the lack of consummation of the marriage due to the man's impotence. Having stated these things, the petitioner for the requested dispensation recounts the reasons for which it is sought, but I do not believe it necessary to dwell upon them here, since they are sufficiently clear, both from what has been said in general and from the letter of the Archbishop, which has been recounted in its entirety above. Finally, the advocate observes that it cannot be said that all the precautions prescribed by the instruction of August 22, 1840, were observed in every respect. For the Holy Congregation never decreed that these precautions must be observed scrupulously under penalty of nullity. He also points out that it is common for statutes to be enacted so that unity in action may be maintained, and that the omission or alteration of these statutes does not necessarily entail penalties of nullity. For the violation of a law does not always entail nullity, but only in those cases in which the law explicitly prescribes that the penalty of nullity shall be imposed, as all Doctors admit.

OBSERVATIONS OF THE HOLY DEFENDER OF THE BOND. On the contrary, the defender of the marriage, by virtue of his office, recalls the acts of the previous proceedings, from which neither the body of the actress was examined, nor the opinion of the doctors considered, nor the testimonies of the witnesses or the confessions. Having stated these things, the defender asks whether what was done in the new judgment in the court of Mechlin corresponds to the instruction issued by the Holy Congregation to the same archiepiscopal court. And without hesitation, he answers that

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some of the things contained in the complement to the proceedings are such that, rather than favoring the actress, they harm her. Indeed, Irma, her father, and her grandmother believe that the impotence of Ernest was proven by the fact that they were told by others. And the actress herself testifies: "I know that one of Ernest's uncles told one of my friends that all remedies were useless."

[*Latin ed. p. 479*]

MECHLIN. 479. Similiter, ille pater testatur quod audivit a viro Bara, avunculo Ernesti, medico Thiry, dicere: "Sanatio Eme sti esse impossibilem." Cum patre chorum agit avia, quae per tramitem aliorum scit, praedictum Thiry affirmasse, mederi Ernestum, esse conatum omnino vanum. Vinculi defensor flocci facit istiusmodi testimonia et confessiones, quippe quae extrinseco et intrinseco valore destituuntur, et subiungit quod factum, ex adverso in prima iudicii sede assertum, acta novi processus purum putumque commentum esse demonstrant. Archiepiscopus ipse fatetur: "quae modo collecta sunt, eo quidem tendunt ut probent virum, Ernestum, non laborasse impotentia perpetua et insanabili." Itaque E. E. P. P. erit iudicare, an Archiepiscopus, non obstante confessione praedicta, recte asserat "inconsummationem rite probatam"; et possit etiam adicere: de illa non consummatione liquido constat iam in primis actis huius processus, et nihil omnino in contraria in hoc supplemento adducitur. Dolet autem vinculi defensor, quod iudex inquisitor rem de qua quaeritur, affirmet, uti videtur, etiam quando testes interrogat; quod mente tenendum est eum in finem, ut quisque perspiciat medicos, Ernesti avunculos, inconsummationem non asserere, quasi ipsis nota sit, sed eam supponere, quia vident a iudice inquisitore affirmatam. Iurisconsulti autem Bara agendi rationem, et excusationes adductas, ut abstineret a qualibet attestatione, decipulas vocat vinculi defensor, et adiungit quod cum praedictus Bara in iudicio confirmare renuat quod ab ore ipsius accepisse inquiunt Irmae pater et avia, tanquam non dicta ea haberi debere. Relate ad civile divortium, medicus De Smet affirmat, illud non contigisse causa valetudinis curandae, quia tunc temporis dominus Haussens habebat omnes virilitatis qualitates. Causidicus vero Van Hoorde, dum ex una parte auditum praestat Irmae patri aliisque de impotentia D. Haussens...

[*Latin ed. p. 480*]

480 MECHLIN. During the discussions, it is lacking in other proofs, so that when invited to present names and testimonies of those who claim to have heard him speak about Haussens' impotence, he responds: "It was impossible for me to obtain from any of the relatives of the Lord d'Haussens any declaration regarding his impotence." But the defender states that it is false that it is impossible to obtain a testimony from the uncles of the man

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Haussens, for it is known that the uncle, Ernesti, has written testimonies and has given evidence in his own words. After these points, the defender concluded, referring to the words spoken by the claimant in the Mechlin court, that it is to be feared that "after a short time, Ernestus will become a well-known man, completely capable of procreation, since it is said that he has a concubine." With these points raised, the purpose was to address the doubt: Whether or not it is necessary to consult with His Eminence regarding a dispensation from a marriage that is valid but not consummated in this case. RESOLUTION. The Sacred Congregation, after discussing the matter, on August 18, 1888, decided to respond in the affirmative.

FERENTINA. MARRIAGE. On March 24th and August 18th, 1888, Session 24, Chapter 1, Regarding Marriages. SUMMARY OF THE FACTS. In the year 1855, in the Diocese of Ferentino, Faustina Mauro and Ioannes Ciottoli were about to enter into marriage. But in the year 1866, Ioannes, pricked by the goads of conscience, and warned by his confessor, even with the counsel of some, abandoned Faustina. And this was for a completely singular reason, because it was uncertain whether the woman was indeed Faustina, or a man.

[*Latin ed. p. 481*]

FERENTINO, 481. A matter was brought before the Curia by a man, and he delegated three doctors from Ceccano to examine Faustina; and these concluded that she was certainly to be assigned to the female sex. But two doctors from Ferentino declared against this, asserting that Faustina's sex was male. Therefore, it was decreed by the Curia that a judgment should be made by more experienced experts. But John declared that he was not able to bear the expenses; therefore, the matter was brought before the Sacred Congregation of the Council, which ordered that the process should be conducted according to the established procedure, and then that the woman should be sent to Rome, so that there she might undergo an examination by more experienced individuals. The process was indeed completed promptly, and was transmitted to the Sacred Congregation of the Council as of April 15, 1870; but the woman refused to go to Rome. However, at that time, civil disturbances arose, by which the city was occupied by hostile forces, and the matter was thus suspended. But in the year 1884, public disputes arose between Faustina and John, and public accusations were made. Therefore, the civil court ordered two doctors residing in Frosinone to examine Faustina's body. And these, under oath, reported that she was a perfect man, and that, with the application of certain remedies, she was also actively capable of procreation. Consequently, it even happened that, shortly afterward, a civil judge presumed to declare the marriage between Faustina and John to be null and void. At almost the same time, at the request of the man, the Sacred Congregation of the Council ordered the Bishop of Ferentino to proceed with the examination of the woman accord-

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ing to the canonical laws, and to transmit the record of the examination to the Sacred Congregation of the Council. Furthermore, midwives, having examined Faustina, reported that she was neither a woman nor a man, and that she was entirely incapable of both active and passive procreation. With these things in mind, and after the matter was brought before the Most Holy Congregation, a proposal was made, taking into account the opinions of the consultants and the objections of the defender of the marriage.

A Synopsis of the Discussion:

THEOLOGIAN'S OPINION: As we often observe that names often correspond to things; so too, actions sometimes correspond to events. *Acta Tom. XXL fase. C C XLVIII. 31*

[*Latin ed. p. 482*]

482 In Ferentino, it is sometimes necessary to convene [a meeting]. Therefore, it should not be surprising that, in these extraordinary times, certain unusual questions arise, when, rather, it should be surprising if nothing worthy of attention is found. To demonstrate this, it suffices to present the case that is brought before your wise judgment today. In the year 1855, in the parish of Ceccanese, within the diocese of Ferentino, John Ciotoli and Faustina Mauro were married, who, as legitimate spouses, lived together in marital union, performing their conjugal duties, and indeed, very frequently. But alas! For eleven years, they remained without any offspring, not, indeed, due to a defect in the husband, but due to a strange and entirely unusual conformation of the wife. From the very beginning of their marriage, John had noticed something in his wife that seemed entirely foreign to the female sex. And although he had considered examining the matter himself, and had even thought several times about dismissing his wife, yet, on the one hand, he had other women to satisfy his full desire for pleasure, besides his wife, and on the other hand, he recognized that Faustina was utterly destitute of all support in life, and he considered it best to keep her with him; even more so, because he believed that he might, in the end, have some influence over her, although utterly in vain and completely ineffectually, in order to achieve the desired result of offspring. But, as I said, after eleven years had passed, and after seeking the counsel of doctors, they finally separated, having requested a judgment of nullity of the marriage contract from both the civil and ecclesiastical tribunals. But what seemed to be a simple matter proved to be difficult, due to the conflicting testimony of experts: some said that Faustina Mauro was truly that monstrous and enormous creature that Horace imagined in his poetic art, when he depicted a creature with the neck of a human head joined to the body of a beast; if we ask the experts what this is that we call

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Faustina Mauro, they reply that she is a "virago," a true woman and:

[*Latin ed. p. 483*]

FERENTINA 483: A perfect man, more a man than a woman, indeed, neither a woman nor a man. Therefore, what is the matter? Truly, most wise Judges, if the burden were laid upon me to write as a defender of the bond, I would find, not only sufficient, but even abundant, arguments to demonstrate that Faustina Mauro is truly a woman; and therefore, that her marriage with John is entirely and in every respect indissoluble. But since, for the sake of truth and by my own conscience, I have been commanded to write; I am compelled to demonstrate that the marriage in question was utterly null, void, and ineffectual, because the contract was made between two men, one of whom, named John Ciotoli, was under a masculine appearance, while the other, to whom the name Faustina was given, was under a feminine guise. But before I proceed to the proofs, which I promise will be concise, I beg you, Most Reverend Fathers, as the consultant says, to consider that this entire discussion concerns the physical and anatomical conformation of Faustina's body, regarding which there has not been a single, unanimous opinion among experts. Therefore, you will excuse me if, in what I am about to say, I should utter something that even the very pen itself shuns. Would that it were permitted me to swear, as it is said in the words of the Master! Which I could do, if all the experts were in agreement. But since there is disagreement among the experts, it is necessary to bring their opinions back to the truth, lest they remain unresolved, and the defender of the bond will oppose them. With these things as a preface, here is the argument. That person certainly belongs to the male sex, in whom both the general conformation of the entire body, and especially the nature of the genital parts, indicate a man: but that person, who appears under the name of Faustina Mauro, presents such a general conformation of the body, and such a, albeit monstrous, nature, as to suggest that she is a man; therefore, Faustina Mauro must be said to belong to the male sex. And with regard to the general conformation of the body, it is clear from the testimony of experts and midwives, that the following are observed in Faustina's body: 1. hair...

[*Latin ed. p. 484*]

484. FERENTINO is sufficiently elongated; 2. beard on the upper lip, on the chin, and on the beard; 3. a resonant voice; 4. a broad and long chest; 5. papillae surrounded by hairs, with absent breasts; 6. a straight side; 7. a gentle and flat abdomen; 8. the vulva is excessively narrow, especially in its external, lower, and posterior part; 9. the shoulders, arms, and legs are excessively muscular; 10. finally, the testicles are present. But all these things manifest the male sex. Therefore, considering the general conformation of the body, it must be said that Faustina Mauro does not belong to the female

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sex, but to the male sex.

I know, indeed, that the demonstration of sex is most properly deduced from the conformation and nature of the genital parts. And I know also that, with respect to this, the question in the case of Faustina Mauro became complex, due to the disagreement between the Experts and the Midwives, who wanted Faustina Mauro to be either an androgynous person, or a hermaphrodite, or a perfect man, or a true woman, or finally, such a monster, which is neither a woman nor a man. But if it is noted that the existence of the female sex is admitted only by the Ceccanese Experts; it will suffice for our purpose if we consider only the testimony of these. For it matters not to us whether Faustina Mauro is an androgynous person or a hermaphrodite; provided that it is certain that she is not a woman, which is certainly sufficient to ensure that marriage in this case is null.

Therefore, in the first place, the testimony of the Ceccanese Experts is indeed very remarkable and very singular, and this is derived above all from the fact that, having recognized in Faustina almost all the signs of virility, the testimony concludes in favor of the existence of the female sex, which certainly seems absurd and inconsistent. But even this being overlooked, it is certain that the Ceccanese Experts came to their conclusion from a preconceived idea, by virtue of which they were previously convinced of Faustina's female nature. Therefore, when the matter was to be confirmed by evidence, they presented such arguments as do not prove the female sex in Faustina, except on the hypothesis that she is truly a woman.

[*Latin ed. p. 485*]

FERENTINA 485; or, if they prefer, they have presented arguments deduced from certain facts, which, if they were as those very individuals suppose them to be, would indeed demonstrate that Faustina is a woman; but since they can admit a completely opposite explanation, nothing should be considered proven based on these facts, and nothing can be proven from these facts. And indeed, they present their first argument based on the fact that Faustina lived with Mauro for eleven years, and that she did so through true marital relations, with true intercourse within a true female organ. But how can these experts from Ceccano assert that this intercourse was truly of its kind and perfectly completed within a true female organ? For the records of the trial and the testimonies of the parties completely contradict and prove the opposite; for with regard to intercourse, the man himself testifies that he only engaged in it with difficulty and insufficiently; and with regard to the true female organ, Faustina herself confesses that the marital entry of the man never actually took place, since she herself lacked those things which are necessary in women for true intercourse. Therefore, if these things were lacking, how can it be said that the intercourse of John with Faustina was perfectly completed within a true female organ? This is all that remains for the experts from Ceccano to assert, namely, that

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the intercourse in this case was simulated and imperfect, and that it took place outside the proper and natural organ. But if this is the case, let them consider how, from such an intercourse, the nature of the sex can be demonstrated. The same must be said of the second argument, by which the experts from Ceccano attempt to prove that Faustina is truly a woman, based on her threefold assertion. For Faustina states that 1. when she was sixteen years old, she experienced the flow of menstrual blood, and that it was so abundant that she was forced to throw herself into a river; 2. she also added, even in the presence of others, that at certain periods of menstruation, she was afflicted with a sensation of pain in the groin and in the abdomen; at that time, she says, she could neither stand nor walk, and indeed she could not even restrain herself from involuntary urination. She asserts that all of these things ceased after a certain abundant hemorrhage (commonly called epistaxis). 3. Finally, when questioned about her affective inclinations...

[*Latin ed. p. 486*]

486 In Ferentino, interrogata de susceptionibus, et de impressionibus habitis ex coniugali copula, respondit: se de suo statu et de habitis venereis impressionibus semper satisfaciant fuisse. Et haec, Sapientissimi Iudices, adeo gravia sunt, ut si vera essent, Faustinam vere mulierem esse, necessario et absolute foret concludendum. At 1. haec asserere non sufficit, sed demonstrare necesse est. Undenam enim sciunt Periti, haec revera locum habuisse, quemadmodum a Faustina narratur? 2. Et probata etiam horum existentia, discutiendum foret de eorumdem natura: nam, exempli gratia, sanguinis fluxus, non solum ex utero, sed etiam ex vesica provenire potest. Ut autem probetur revera menstruorum naturam habuisse, probandum pariter foret non ex vesica, sed ex utero promanasse. Hoc tamen Periti non demonstrant. Pariter ut frequentes illae doloris sensationes in inguine et in ventre haberi possint tamquam menstrua, vel menstruorum signa, certum esse deberet et regulariter quoad tempus et ordinarie quoad cessationem cum menstruis convenire; sed de hoc vel silent Periti, vel non satis sufficientem explanationem adducunt. Attamen 3. quod omnem tollit difficultatem est ipsa Faustinae depositio, qua in iuridico examini ultro fassit se in hisce omnibus assertionibus mentem fuisse. Cum enim iuridicae depositiones non convenirent cum verbis antea prolatis, cumque de hoc interrogata a Iudice fuisset respondit: quod nunc refero est mera veritas... cum per undecim annos inservierim in domo mariti, proiici ab ea, mihi fiebat res tristitia plena: exinde nascitur falsitas depositionum, quas tunc peregi. Ehe infelix! mortuis parentibus, omni destituebatur vitae subsidio. Cum igitur habeamus ex una parte facta allegata, saltem graviora, talia esse, quae possint etiam in hominibus verificari; cum habeamus, ex altera, haec omnia falso a Faustina asserta fuisse; argumentum inde deductum nullius roboris esse, nos non solum, sed ipsi etiam ceccanenses Periti cognoscant

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necesse est.

[*Latin ed. p. 487*]

FERENTINA 487. A third argument in favor of recognizing Faustina Mauro as of the female sex is drawn from 1. the absence of any sign of seminal secretion; 2. the absence of those infirmities with which Faustina would necessarily be afflicted, given the aforementioned lack of secretion. But, with respect to such learned men, I ask them, how and by what means do they truly prove that all and every sign of seminal secretion is lacking in Faustina Mauro? For, in order to affirm this, more inspections would be necessary, requested over a long period of time, all the more so because, speaking absolutely, such signs may be absent even on the very day on which semen was truly emitted. Therefore, on what grounds, based on only one, or even two, inspections, do the experts of Cecan conclude that seminal secretion has no place in Faustina? Perhaps they will say that they deduce this from the absence of the excretory organ, or rather, that the supposed penis of Faustina entirely lacks a urethra. But what is surprising, even if the fact were true? In a man, says Vidal, a perfect absence of the urethra is rare, but examples do exist. *Pathol. sez. 29 cap. 1 art. 1.* Therefore, even if it were the case that Faustina's penis lacked a urethra, it could not be deduced from this that seminal secretion has no place in her. Nor do the experts of Cecan succeed when they attempt to deduce the necessary existence of certain infirmities, arising from an impeded emission of semen. For it must be known that 1. even in healthy individuals, who are in a normal state, the genitals may experience a period of inactivity; from which it follows that they emit very little semen. And just as this occurs in the elderly due to the effects of age, and in some young men for a particular reason, so too, it seems, it should be considered in Faustina, all the more so because the very fact that she is uniquely in a normal state demonstrates this; 2. it must also be known that, for various reasons, semen can descend through a reversed path into the bladder, in which case, when it is naturally emitted with urine, it does not necessarily give rise to any infirmities. With these things established, who would ever dare to assert that...

[*Latin ed. p. 488*]

488 Is it not possible to verify that Faustina Mauro is not a man, especially since her genitals, being imperfect, monstrous, and repugnant to nature, are entirely and universally considered to be such? But let us proceed to the final argument, with which the experts from Ceccano attempt to demonstrate that this external form does not originate from the intrinsic and substantial nature of male genitalia, but only from a certain lascivious development of the woman's pudenda. Hence, they call the penis a simulacrum, the scrotum a vulva, they name the extraordinary conformation of the same a vagina, and they recognize the urethra in certain membranes that de-

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scend from the frenulum into the vaginal opening. And as if this were not enough, they describe the nymph and the hymen, indeed even the folded labia of the pudenda, as if Faustina Mauro were the most perfect of women. But to what purpose, esteemed Fathers, do all these things serve, asks the Consultant? It suffices for us to point out two things, which, if they were found in Faustina, would prove the absolute demonstration of her male sex, namely, the complete absence of the uterus and the certain existence of the testicle. But these things are found in Faustina, and are confirmed by experience, by anatomical demonstration, and by the testimony of the very experts from Ceccano: therefore, whether the experts from Ceccano wish it or not, we must maintain that Faustina is a man. And indeed, that the uterus is completely absent in Faustina, I would say is proven not only physically and anatomically, but almost metaphysically, from two most accurate explorations, carried out by the experts from Ceccano, in which, through a median fistula and the aid of a finger, it was most clearly demonstrated that, between the bladder and the rectum, no other organ whatsoever was found. But if the uterus were present, it should be found precisely in this location. Nor is it to be supposed that, in this individual, due to some abnormal conformation, it would be found outside of its proper place: for, given any vitiated conformation, it is absolutely necessary that, if the uterus is present, it should be found in communication with the vagina; but...

[*Latin ed. p. 489*]

FERENTINO: From 489 completed examinations, it is established that Faustina's presumed vagina communicates with a single bladder; therefore, in Faustina, the existence of the uterus must be entirely and most certainly denied. While it is established that the uterus is absent, it is clear that the existence of the testicles must be entirely maintained. Furthermore, as the experts from Ceccano state, an ovoid body is found in Faustina's scrotum, which contains all and each of the parts required to constitute a true testicle, as they themselves claim, beginning from the scrotum and extending to the groin. Therefore, how can it be denied that this body is a true testicle? The experts from Ceccano claim that this body is merely some gland, having no connection whatsoever with the true testicle. But let the experts from Ceccano first demonstrate that ordinary glands can be endowed with organs, membranes, and coverings, and especially with an excretory canal, as is the case with Faustina's testicle; and then, willingly, we will concede to them that this testicle is nothing other than some gland. Meanwhile, we, adhering to what has been presented by the very experts from Ceccano, argue as follows: Whatever the external form of the genitals may be, the male sex is most certainly recognizable, where the absence of the uterus and the presence of the testicles can be proven; but in Faustina Mauro, it is proven by all arguments, and with greater certainty, that the uterus is absent, and the testicles are present; therefore, Faustina Mauro is

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entirely a male, and must be regarded as such by all. Since these things are so, and since it is physically and anatomically established that the general conformation of Faustina's body, and the substantial nature of the specific genital parts, indicate a male, and since her marriage to John was null, this is demonstrated by a single argument: Marriage is the union of a man with a woman; but in this case, there is a union of a man with a man; therefore, no marriage can take place. Therefore, I believe that nothing prevents the granting of a document of freedom to John Ciotoli, and that Faustina Mauro may, under a changed name, be permitted to live as a male.

[*Latin ed. p. 490*]

490 FERENTINO, THE OPINION OF A CANONIST. After making certain preliminary observations and omitting the question concerning the error of the person, in order to promote fuller clarity, the Consultant stated: "The entire discussion seems to be reducible to a single point of doctrine: marriage is null and void, and lacks all validity, due to a deficiency in the subject on the part of the supposed wife. Marriage, simply taken, has its essence only in the conjugal bond, as St. Thomas states in *Summa Theologica*, 3rd Part, Question 44, Article 2; otherwise, it is not conceived. Therefore, considering this essence, two things are necessarily required for the bond to proceed: the contract itself, and the obligation; the latter, from itself, adheres to the matter concerning which the contract is celebrated. And since, according to the common opinion of Pirhingius, *Institutiones Canonicae*, Book 4, Title 15, number 69; Schmalzgrueber, *ibid.*, Title 1, number 225; and Lawrence, *Formularium Ecclesiae*, I, 4, number 78, the term of this contract is the right to the mutual exchange of bodies in order that they may become one flesh; hence, the difference of sex is a necessary matter in this contract, as Basilius, *Poncĭo De Matr.*, Book 7, Chapter 57, number 2, states, approximately in the middle; and in so far as it refers to the sex, it is a remote matter; but in so far as it refers to the transmission of the right of this, it is a proximate matter, as Laymann states, *ibid.*, Chapter 2, number 3; St. Ligorio, *Theologia Moralis*, I, 6, number 880, etc. Therefore, it is correctly concluded that marriage without consummation is invalid, according to the decree *in iure* 27, Question 2, Chapter 1, concerning marriages, with St. Thomas in *Summa Theologica*, 3rd Part, Question 48, Article 1, ad 3; Sánchez, *De Matrimonio*, Book 2, Disputation 28, number 3; Palao, *De Sponsalibus*, Dist. 2, Paragraph 1, number 3; Pirhingius, *I. C.*, etc., etc. But in order to proceed more clearly in explaining the question, it must be said that there is a different respect in which marriage relates to sex and to consummation. Consummation is considered in marriage as the object which the spouses indeed promise, and to which they grant a right over their bodies; but sex is considered in marriage as the subject which the spouses do not promise, but which they give to each other, namely, the difference of sex, in order that they may exercise that right, so that, if they

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wish, they may become one flesh."

[*Latin ed. p. 491*]

FERENTINO 49. Hence, the reason is derived why, in the case of impotence that follows, marriage still remains valid, argument c. Consulenti 4. Concerning frigidity and impotence; because, indeed, although the object, that is, the power of exercising the promised right, may be lacking, the subject, or the material necessary for marriage, which consists in the difference of sexes, does not lack. But if this difference should cease by accident, as, for example, in a hermaphrodite, a *gynandros*, that is, a female who, as such, contracted marriage, and afterwards, due to the preponderance of the weaker sex, namely, the male organs, as has happened several times and is seen in Pignatelli, *Consult*, volume 4, consultation 34; Ursay, *Institutiones iuris canonici*, I, 3, title 5, number 205 and following; Zizzio, *Compendium iuris medicorum*, volume 1, § 168, edition of Naples, 1880; *Monacum Manuale medicinae legalis*, part 1, chapter 7, ibid., 1887, etc., if he becomes an androgynous person, that is, a male, then the marriage is immediately dissolved, according to Basilius, as cited above, and Lugo, *Responsiones morales*, I, 1, doubt 31, number 8 (who, if I am not mistaken, are the only ones who resolve this case incidentally). And the reason is because, when the material is lacking, the contract is immediately extinguished, precisely for the same reason that, through the death of a man, the woman is released from the law of the man, and vice versa. Furthermore, sterile individuals validly and licitly contract marriage, as stated by St. Thomas in the 4th distinction, 34th question, article 2; Pirhingius, *loc. cit.*, number 4; Engel, *Collectio uniuersalis iuris*, I, C, ibid., number 3; Palaus, *op. cit.*, I, chapter 1, division 4, page 14, § 1, II, 3; Sánchez, *op. cit.*, I, 7, discussion 93, number 26; St. Liguori, *op. cit.*, I, number 1095, based on the universal practice, which is the best interpreter of the laws, I, 37 and following. Concerning the laws, because both the object and the subject are not lacking so that they can be fulfilled, if they wish, as one flesh; although, by accident, the primary end of marriage may be frustrated due to the quality of the subject, as stated in St. Thomas, 27th question, 1st chapter, on marriages, 41. For what happens by accident is not to be considered, but what can happen through that union itself. Therefore, it is clear that hermaphrodites can validly and licitly contract marriage, even though, as such, they may not be able to procreate or be procreated; as taught by physiologists and as stated by De Orecchio, *Lezioni di medicina legale*, book 4; Laura, *Trattato di medicina legale*, section 1, chapter 1, %4; *Monacum*, *op. cit.*, and so, sterile individuals should be considered, whatever some, among whom the most eminent Zacchias, may think.

[*Latin ed. p. 492*]

492 FERENTINA, Quaestiones Morales, Medium Legis, I, 7, title i, g, §

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8, and Ursaya, *De Venditionibus*, chapter 12; which, however, perishes in the lower species of animals, as naturalists demonstrate, and as Zasius states in *De Jurisprudentia*, I, chapter 12. But, as it is true that in contracts the matter must be certain and determined, according to Regius, 116, § 2, *De Regulis Turpitudinis*, so that all error may be avoided, otherwise it would be void according to the law of nature, as in the case of ambiguous terms, *De Rebus Dividendis*, I, 11 and 41 ff., and *De Contractibus Emptorum*, it is the case that hermaphrodites, with a determined, albeit weaker, sex, may lawfully enter into marriage, according to Schmalzgrueber, *Opera*, I, 4, title 15, § 54, Reiffenstuel, *Tractatus*, chapter 12, § 24, and Laurentius, *Opera*, question 242, § 2. And, as is stated in I, questions 10 ff., *De Status Hominum*, and Baldus adds there, and the Glossa in 4, questions 2 and 3, if witnesses testify, "Hermaphroditus," *Repetitio*, § Hermaphroditus, *De Testibus*, I. But it is questioned in *De Libellis et Posthitis*, and in a doubt presented at Valencia, whether a hermaphrodite wishes to contract marriage, the parish priest is bound to inquire from him, through the ecclesiastical judge, a sworn oath to observe the chosen sex, as universal custom has established, and as Maiolus states in *De Irregularitatibus*, I, 3, chapter 25, § 16, Sánchez, *Opera*, I, chapter, discussion 106, § 1 and 7, Palaus, *Opera*, L, chapter, discussion 4, page 14, § 5, § 5, Schmalzgrueber, *Opera*, I, chapter, Leurenius, *Opera*, chapter, number 1, and others, throughout. Presbyters and chapter 5, *De Diversis*, concerning divorce, both because of deformity and also because that which is divided into two cannot stand. Therefore, from the aforementioned, it is clearly established that the marriage of a hermaphrodite is valid according to the law, because the object and subject of marriage are found in him, both with regard to sex and with regard to copulation; from which arise the certain and determined, whether proximate or remote, matter of the matrimonial contract, for the value of the essential bond of marriage, even if the hermaphrodite is sterile by nature. Now, it must be considered whether these conditions are present in the case at hand, so that it may be determined whether the marriage of Faustina, being ratified and valid, can be maintained. To this question, I would answer: negatively.

[*Latin ed. p. 493*]

FERENTINA 493: Because the defect in the subject is demonstrated with the fullest and most conclusive proof, on the part of the wife, this is shown by the confession of the hermaphrodite himself, by the criminal imputation made against him; by the legal testimony of experts; and finally, by the observations derived from the acts themselves. Before I speak on the matter proposed, Very Reverend Fathers, I will use the words of the most excellent Zacchias, Luke 19:8, "I beg you, if anything here offends your ears, excuse the quality of the argument, because otherwise it cannot be treated." For we are men, compelled by such miseries, which certainly dis-

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turb with their filthiness. But, "if Angels, as Ludov. Bail says in *Concil*, vol. 2, page 811, were men, they would not need such defenses," says the most learned Sánchez, defending them from such censures. Furthermore, the defect in the subject is proven, on the part of the wife, by the confession of the hermaphrodite himself. It is generally taught that the confession of the spouse must be fully proven in matrimonial causes, as Reiffenstuel teaches in *op. cit.*, I, 4, title 18, no. 15; Pirhinghius, ibid., no. 3; and others commonly argue from *c. In omni* 4 *de test.* and *c. Cum in tua* 27 *de Sponsal.* and *matr.*. However, regarding hermaphrodites in particular, Navarras *Cons.*, L, 1, title 14, *de act. et qual. ordin. cons.*, 8, and elsewhere, Reiffenstuel, *op. cit.*, I, title 15, no. 25, Schamlzgrueber, I, c., no. 5, and others, from common usage, which flows from the common sense, can be safely followed, as Mascardo says in *De probat.*, in the preface, no. 2, that when it is a question of a present matter, the hermaphrodite himself knows more about himself than others. "It does not escape me," says the Consultant, "that against the head of this doctrine, regarding hermaphrodites, Zacchias widely discusses, Luke 19:15 and following, where he tries with many arguments to refute the aforementioned opinion of D.D., maintaining the contrary, that, from the prevailing sexual characteristics, and from other habitual characteristics stipulated, the criterion for determining whether a hermaphrodite is male or female is, for doctors, the most certain." But later, Zacchias himself admits that this criterion admits of exceptions.

[*Latin ed. p. 494*]

494 At Ferentino, he incidentally mentions it. n. 18 seqq., and therefore, he acknowledges that he is susceptible to error. Although Faustina may have uttered some falsehoods, her faith in this matter cannot be doubted, as she gives testimony concerning herself. For, when asked whether she had consummated her marriage with her husband, she answered negatively, because the man was unable to enter her, lacking that which ought to be present, as in other women. This confession, although it does not explicitly refer to the absence of the female organs, that is, to a physical defect, nevertheless strongly supports Faustina's true modesty, when considering her behavior in the judicial process, as she uses circumlocution, which has the same force as an explicit statement. Furthermore, if certain things are requested, n. 1, if a member of a family is questioned, n. final, n. de legib. 2 L, also because n. de paci. and it is approved in the passage Glossa c. Unico de Cler. non resid. in 6, the ambiguity is completely removed, and this is all the more to be assumed because Faustina's circumlocution corresponds exactly with the depositions of expert witnesses, both judicial and extrajudicial, of which more will be said below; from these supporting elements, it can be said that her testimony is completely and conclusively fulfilled. This is proven by the reports of expert jurists. In the art of jurisprudence, it is commonly taught that testimony, as in the cited passages, juxta. Fraterni-

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tatis 6 and c. Literae vestrae 7 de frig et malef., is sometimes necessary in law, as Engel, op. cit. I. 2 n. 11, Wiestner Inst. Canonie, ibi n. 24, Schimier Procès, iudic. c. 13 n. 35 seq. and others state; and that it must be considered as proven evidence, as Mascardus op. cit. conci. 1037 n. 2 seq. and many others state; and that, after the legal proceedings have been completed, the evidence is not presented through testimony, but through a report imposed by the judge, which is in accordance with the universally accepted theory of Felini in c. Proposuisti 4 de prob. n. 6, as is argued in the cited passages on all types of valid evidence. Furthermore, if an intrusion occurs, n. 8 fin. ff. finium regund. and it is held by Gaill. De Ian. pub. L 1 cos. 26 n. 9, Wiest 7. c. n. 27, and others. To the extent that several experts are appointed, «

[*Latin ed. p. 495*]

FERENTINA: It is noted that one of them offers an opinion; but the greater part of them, and that part which holds the majority in these cases, is said to have the consensus of the entire body regarding the text in I. Nulli, *Glossa verb. duae partes et I.*, and *Glossa verb. Quarta parte vers.*. Also, note ff. de Paci., the Abbot in c. Cum omnes n. 13 *De Consul.*. Thus, Ursaya, *Discipline Eccl.*, vol. p., disc. 12, n. 77. This must be observed in individual cases, where eight expert judges, and two extrajudicial experts, are joined with three others. Thus, the eight, or rather the ten, are to be preferred over these three, because it is stated that "the opinion of the majority should be considered, and the greater number present is to be taken into account," according to the *Rota* apud Zacchias, *op. cit.*, decision 43. In Romana, the Sacred Office, on June 11, 1619, before the Sacred Congregation, decision 44. In Eugubina, the Benefice, on May 1st of the same year, before Buratto. "Indeed." However, in this case, the majority of the experts, or eight against three, maintain their opinion and, under oath, affirm that the subject lacks the uterus, possesses male characteristics, and therefore suffers from female impotence. They strive to refute the opinion of the three who dissent. And as a legitimate consequence, they conclude that the marriage in question is null and void due to the lack of a subject on the part of the supposed woman. Finally, the Consultant considered and sought to demonstrate that a remedy must be sought for the double defect with which the process is burdened: first, because witnesses were omitted in the examination; second, because the judicial solemnities were violated. And he concluded by proposing the following question: Is the marriage of a hermaphrodite null in this case? To which question the answer was given, prior to the oath, in the main examination, after the words "with the Most Holy," affirmatively.

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE, FROM THE OFFICE. The Defender, he says, maintains that the marriage, which John Ciotoli solemnly contracted with Faustina Mauro in the year 1855, is to be considered invalid, alleging that since the year 1866, Faustina has

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concealed a male sex under a feminine appearance.

[*Latin ed. p. 496*]

496 FERENTINO. Vindex deemed it unnecessary to elaborate on the lengthy history, to detail the various and diverse phases and outcomes with a flowing pen. Something will be said about these matters in the course of the observations, when the opportunity of the discussion requires it. It is sufficient to record here that, on May 12, 1884, the Sacred Congregation ordered the ecclesiastical court of Ferentino to proceed, with due regard for the laws to be observed, to a physical examination of the woman by men of proven expertise and integrity, and to subject the woman and the witnesses presented by her to examination, and to transmit the relevant records to the Sacred Congregation, along with a copy of the report prepared by the experts before the civil tribunal. Although the Church has nothing older than the principle that a woman should be examined regarding her virginity not by doctors, but by midwives, nevertheless, in the present case, the Sacred Congregation ordered that Faustina be examined by doctors. For it is no longer a matter of investigating the signs of an intact or corrupted hymen, but of ascertaining the capacity for intercourse, for which a greater expertise is required than that found in midwives. See Sánchez de Matrimonio, book 7, disputation 113, n. 21: "Twelfth conclusion. Although, regularly, matrons of good reputation are chosen to examine a woman, as is evident from chapter 'Proposuisti' and from the penultimate chapter 'De probatis,' and from the chapter 'Fraternitatis,' and from the final chapter 'De frigiditate et modestia.' However, when a more thorough expertise is required for judgment, than that which is found in women, so that the faculty of proof may not be lost, or a valid marriage may be dissolved, or an invalid marriage approved, expert doctors must be employed to examine the woman. This importance and necessity outweighs natural modesty; just as doctors are consulted when the urgency of illness demands it. And it is proven from the chapter 'Ex Uteris de frigiditate' – there – 'If that defect was contracted by the woman by nature, she will not be able to be helped by the aid of doctors.' – And from the chapter 'Fraternitatis,' the words 'Per haec autem' in the same title – there – 'Unless by inflammation, or by something similar..."

[*Latin ed. p. 497*]

FERENTINA 497: nor does violence seem to be involved. For both texts presuppose that women are to be examined by physicians in these cases, since they are those who cannot judge or decide without observation. And so teach Francis of Arezzo, etc. Indeed, the Ferentino court did not understand this at all. A hundred times I have complained about physicians being used in matrimonial causes, without necessity, contrary to natural decency; today I must complain about a matter so difficult and unusual,

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which is entrusted to midwives, who are not equipped for it, unless they are outstanding in their art. Therefore, in order to pass over other very serious flaws in the proceedings, which the most learned canonist points out, the acts are invalid, either because the form prescribed by the Sacred Congregation of the Council, by order of the Most Holy Prince, in the aforementioned rescript, was not observed, or because prudence forbids blind adherence to the testimony and judgment of midwives. Before the examination, "The experts," says the clerk, "diligently instructed the aforementioned midwives about the manner of examining the woman." And then, immediately, the same experts were questioned after the midwives had reported and given their depositions. But with these precautions, which are sufficient to explore virginity, no sane person can be satisfied when the matter is about investigating the ability to procreate or the sex. I confess that Faustina was not only examined by the three midwives mentioned above on November 10, 1886, but also previously by various experts. Indeed, her body was examined on September 4, 1866, by the physicians Aloysius de Antonis and the surgeon Aloysius Pagamici of Ferentino; on February 14, 1867, by the physicians Henry Iacomelli and Eugenius Sarzana, as well as the surgeon F. Lucangeli of Ceccano; and on March 30, 1884, by the physicians and surgeons Joseph Badaloni and Valerius Orlandi of Frascati. Note, however: first, that the last two experts, Joseph Badaloni and Valerius Orlandi, are to be considered as extrajudicial, since they are laymen, not ecclesiastical judges, who examined Faustina's body; second, Acts, Volume XX, page C, number XLVIII, 32.

[*Latin ed. p. 498*]

498 The archiatrists of Ceccano, namely Henricus Tacomelli, Eugenius Sarzana, and Father Lue Angeli, unanimously concluded at the Forum that the person in question was a woman. Since these esteemed consultants have reached a very important conclusion regarding Ceccano, it is worthwhile to pause briefly and consider the facts upon which they rely. For not only do these facts demonstrate the diligent study and sound judgment with which the experts from Ceccano have fulfilled their assigned task, but they also reveal the lack of rigor among those who have reached the opposite conclusion. I am not speaking of the midwives. For these individuals, like those who overstep their bounds, are at fault not for their own shortcomings. Nor will I recount, given that we are dealing with a matter in which brevity is required, the less essential indications that were meticulously investigated by the experts from Ceccano. However, the more powerful signs are summarized by Zacchias in his *Quaestionum medico-legalium* in Book 7, title 1, question 8, number 20: — there — < It should be noted that the menstrual flow, in the absence of witnesses, constitutes the most reliable proof of the female sex, even if other signs were present that would indicate the male sex, and even if the male genitalia were present:

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for the menstrual flow indicates the internal temperament of a woman, and the perfect constitution of the female genitalia, which, while such a constitution exists, makes it impossible for the male genitalia to reach the same perfection at the same time. > But all of these things are attested to by the experts from Ceccano. Therefore, with the evidence clearly presented, and not based on a preconceived notion, these same experts conclude that the person in question is a woman. This conclusion, though modest in itself, fully resolves the question. For a marriage, once contracted, cannot be declared invalid unless it is demonstrated with apodictic arguments that Faustina lacks the power to cohabit. On the other hand, I cannot praise those two experts who are laymen.

[*Latin ed. p. 499*]

FERENTINA: 499 judges were appointed, who, in matters of the greatest importance, about which, unless there is certainty, doubt is present for all, deny with the utmost security, even if it means explaining or preventing others from having the opportunity to err. Furthermore, they insist on the presence of the vulva, not only three experts from Ceccano, but also two from Ferentino assert. However, these aforementioned experts, content with a tripod, pronounce: "The vulva does not exist: nothing else." An excellent theological consultant notes: "If the uterus is present, it absolutely demonstrates the female sex." From this apodictic argument, these experts evade the issue with the words, "The uterus is not visible." They should, I beg you, have shown the diligence and precautions they used in order to have been able to see the uterus, if it were present. Moreover, the doctors from Ferentino attempted something; I, myself, am not a doctor, nor am I the son of a doctor; but, perhaps, the doctors from Ferentino did not do enough. The aforementioned lay judges of the tribunal, no less than in denying facts contrary to their conclusions, are eager to hear and accept those things that are pleasing to them. I cannot follow up on everything, but I will indicate only one example, as if it were a specimen; they say that any part of the scrotum contains a normal testis. This argument is certainly of the greatest importance. "For witnesses are so called," says Zacchias in his work, book 7, title 1, question 8, paragraph 18, "because they give testimony of virility." But these experts, while asserting this, are brilliantly contradicting all other experts; for, with one voice, they assert that the testes of Faustina are not normal; indeed, the right testis completely eludes the sight of some examiners. Regarding this, there is a conflict between the three experts from Ceccano and the two from Ferentino. The former, proceeding with a leaden or clayen foot, insist that everything indicates the presence of an image, and not the very nature, of the testes in Faustina; while the latter rush to judgment, asserting the presence of a normal testis. The best canon lawyer consultant considers the experts from Ceccano to be

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deceived. "From certain comments," he says, "they appear to be..."

[*Latin ed. p. 500*]

500. In Ferentino, Faustina expiravit; id est, ella riferì di avere mestruazioni e epistassi, nonché di alcuni sintomi riguardanti l'ipogastrio e l'inguine. Questi singoli dettagli furono poi ritrattati. Tuttavia, è da notare che gli esperti di Ceccano non si fidarono tanto delle confessioni di Faustina, quanto delle scoperte fatte da loro stessi con straordinaria diligenza. Successivamente, non vedo cosa potrebbe aver indotto Faustina a ritrattare: né le mestruazioni avute all'inizio della pubertà, né le successive emissioni di sangue con i relativi disagi, né altri fatti rivelati ai conoscitori di Ceccano. Infine, se si dovesse temere che Faustina avesse mentito allora, perché era riluttante a essere convalidata dal marito, si deve anche temere che stia mentendo ora, perché rifiuta di tornare alla vita matrimoniale dopo vent'anni. Né un consultore eccellente cercò di provare il sesso maschile di Faustina, sostenendo che ciò derivava da un crimine commesso da Faustina nella simulazione. Posso negare che le sia stato inflitto un crimine di sodomia con una sorella, perché ciò non risulta minimamente da un processo legale, ma anche ammesso questo, non ne consegue immediatamente che Faustina sia un maschio. È risaputo che donne di questo tipo, anche se non raggiungono affatto il sesso maschile e mantengono perfettamente la loro natura femminile, possono avere desideri e appetiti perduti. Pertanto, ritengo opportuno che i più saggi consultori considerino ciò che è rilevante, come si trova in Zaccaria, citato nel libro 7, titolo 1, questione 8, numeri 24 e 25. Dato che queste cose sono rilevanti per la questione in esame, ovvero se si possa stabilire la nullità del matrimonio in questo caso, la risposta è: Negativa. Se non, si devono ritardare e completare gli atti. Con queste osservazioni, la questione da esaminare è se si possa stabilire la nullità del matrimonio in questo caso.

RISOLUZIONE.

Il Sacro Concilio, essendo a conoscenza della causa, il 24 marzo 1888, decise di rispondere: Si ritardi e si faccia una nuova indagine, da parte di tre esperti medico-chirurghi, designati dalla Sacra Congregazione, allo scopo di esaminare Faustina Romain, che verrà a Roma.

[*Latin ed. p. 501*]

HAVING received information from No. 501, the orders of the Holy Congregation having been regularly fulfilled, and after an investigation, the following conclusions were reached: 1. Faustina Mauro was endowed with male sex. 2. She is not fit for the consummation of marriage, being a woman. 3. This impotence is antecedent to the celebration of the marriage, namely, in the year 1855, and is permanent and incurable. Having again completed these matters, the purpose was to clarify the question of whether there exists a nullity in the marriage in this case.

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RESOLUTION. The Holy Congregation, after again discussing the matter, on August 18, 1888, decided to respond: Affirmative.

FROM WHICH THE FOLLOWING ARE UNDERSTOOD:

I. Marriage is null and void from the beginning due to a deficiency of the subject on the part of the woman, and each spouse is freed from the law of the other, as if by the death of one of the spouses.

II. Since the purpose of this contract is the right to the mutual giving of bodies in order to the copula, by which two become one flesh, hence, the difference of sex in marriage is a necessary matter, although copula itself is not necessary.

III. But copula and sex are considered differently in marriage; for copula constitutes the object which the spouses promise and to which they grant a right in the body to each other; sex, however, is considered as the subject, which the spouses give to each other in order to exercise the right of copula, as far as they wish.

IV. From this difference arises the fact that a marriage already begun can stand without copula, as happens in the case of subsequent impotence, because only the object is lacking, but not the necessary matter of marriage; but no marriage would be already begun if the difference of sex ceased, as happens in the case of a hermaphrodite, due to the subsequent prevalence of one sex, because then the necessary matter or subject would be lacking.

V. Hence, it follows that even the sterile and hermaphrodites can validly and licitly contract marriage, having chosen and determined their sex, even though, by accident, the primary end of both may be frustrated.

[*Latin ed. p. 502*]

In FERENTINA, concerning the matter of marriage; while the second [type of marriage] cannot produce or be made to produce offspring, and are to be considered equivalent to those who are barren, as commonly taught by physicians. V.I. It is customary to choose matrons to examine a woman, for the sake of propriety; except in the case where greater expertise is desired, which is not found in women; in such a case, physicians must be appointed, so that the ability to make judgments is not lost, nor is a valid marriage declared invalid or void. DECREE concerning the Beatification, or declaration of martyrdom, of the Venerable Servant of God, Gabriel Perboyre, Priest, from the Congregation of the Missions of Saint Vincent de Paul. The Venerable Priest, John Gabriel Perboyre, greatly increased the honor and glory of the Militant Church, with remarkable constancy in defending and spreading the faith of Christ; having taught the nations so that they might be saved, he attained the precious palm of martyrdom, illuminated by the splendor of miracles. He was born to parents distinguished by ancient piety, in the year one thousand eight hundred and

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eighty-two, on the Feast of the Epiphany of the Lord, in the town of Puech Caduc, in the Diocese of [unspecified], and from his youth was adorned with the most upright morals; even as a young man, he was enrolled among the students of the Congregation of the Missions of Saint Vincent de Paul. There, he briefly served as an example of virtue, and was sent to the Empire of China, to work for the conversion of the pagans to the Christian faith. However, within four years of his arrival in that region, a cruel persecution of Christians broke out, which first struck the evangelist himself. Accompanied by some companions, the Venerable Servant of God fled; but, for the price of thirty pieces of silver, by a neophyte betrayer, not unlike Jude, he was delivered to his enemies, and was bound with the tightest chains, beaten with blows, and dragged backwards with his hands tied behind him. Subsequently, he was kept in a horrible prison, and repeatedly taken from it to be brought before the tribunals, not for judgments, but for even more atrocious punishments, insults, accusations, and impious investigations.

[*Latin ed. p. 503*]

DECREE 503. He was always held in the most severe chains, and often tortured with whips and torments, until pieces of his flesh were torn away, and his own human form was scarcely recognizable. Accused by false witnesses of impurity and the practice of magic arts, he was marked with the stigma of infamy on his forehead, and was forced, according to a superstitious custom, to drink the blood of a dog. After a long struggle of one year amidst the greatest torments for the sake of the faith, which he bore with steadfastness, uniting remarkable gentleness with invincible fortitude, he finally reached the extreme penalty, as if hurrying towards triumph. Suspended from a beam, where the inscription of the death penalty was displayed, with a rope around his neck, he gloriously completed his martyrdom on the eleventh of September, in the year one thousand eight hundred and forty. The fame of his martyrdom having spread, the faithful, excited by the sanctity and the wonders of his life, flocked to the place of execution, and especially took care to redeem the precious body of the renowned martyr from the hands of his persecutors. The Apostolic Vicars, who were present in those regions, endeavored to prepare accurate accounts and to collect suitable testimonies concerning the deeds of the Servant of God, and the acts of his martyrdom. When these were brought to Rome, considering the great difficulty of establishing regular judicial records due to the circumstances of the time and place, His Holiness Pope Gregory XVI, who had already mentioned in a consistorial allocution that the testimonies were sufficiently suitable, granted that they should be considered as equivalent to the records of an Ordinary Inquisition, and therefore, approving the judgment of a special Congregation of Sacred Rites appropriately appointed by himself, he signed with his own hand the commission for the introduction of the cause of this Venerable Servant of God, and of many other Servants

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of God who were killed in China for the sake of the Faith, on the ninth of June, in the year 1843. However, the cause of the Venerable Gabriel was subsequently separated from the others in order to be expedited more quickly, due to the numerous miracles that occurred. But, due to the distance of the region and the vicissitudes of public affairs, a considerable period of time passed in preparing the apostolic processes and presenting them to the Sacred Congregation, and in properly examining all the preliminary questions according to the canonical regulations. These matters having been happily concluded, on August 11, 1862, in the Preparatory Congregation, the matter of the martyrdom and the cause of martyrdom was discussed by the Most Reverend Cardinal Constantinus Patrizi, of the Sacred Roman College, Prefect of the cause, and Relator. The Preparatory Meeting followed, held in the Apostolic Palace at the Vatican on July 8, 1886, with the Relator, the Most Reverend Cardinal Dominic Bartolini, who had replaced Cardinal Patrizi, present, along with the Sacred Cardinals.

[*Latin ed. p. 504*]

504. A decree, issued with the permission of the authorities, concerning matters pertaining to liturgical rites, and under a single doubt, was also enacted concerning celestial signs or miracles, which illuminated the blessed death, both in the body and in the tomb of the deceased, and his wondrous apparition by which he invited a pagan man to Baptism, and then, a restoration of health to a single sick person. Thirdly, at the general assembly before the Most Holy Lord Pope Leo XIII, gathered in the same Apostolic Palace at the Vatican, on the eve of the Ides of June, recently passed, the Reverend Cardinal Charles Laurenzi, after the living Cardinal Bartolini had passed away, acting as the advocate in the cause, proposed the following doubt: Whether it is established that there is martyrdom and the cause of martyrdom, and also signs and miracles, in the case and to the effect of which we are speaking, and that each of the Reverend Cardinals and Consultors should give their votes in order. After these were received, the Most Blessed Father wished to defer his decree, warning those present to insist with constant prayers to God in this very serious matter. Furthermore, on that last Sunday after Pentecost, and on the sacred day of the most glorious Virgin and Martyr Catherine, who arrived at the eternal nuptials of the Divine Lamb through a similar path of the most bitter sufferings, having previously offered the Eucharistic sacrifice to Himself, the Reverend Cardinals Angelus Bianchi, Prefect of the Congregation of Sacred Rites, and Charles Laurenzi, Relator of the Cause, together with the Reverend Father Augustine Caprara, Promoter of the Faith, and myself, the undersigned Secretary, were summoned to the Vatican, and in their presence, He solemnly pronounced: It is established that the Venerable Servant of God Gabriel Perboyre is a martyr, and the cause of martyrdom, illuminated and confirmed by numerous signs and miracles from God. He

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ordered that this decree be published to the public, and recorded in the acts of the Sacred Rites Congregation, on the 7th day before the Kalends of December, in the year 1888. (L. Card. BIANCHIS. R. C. Prefect ©S.) LAURENTIUS SALVATI S. R. C. Secretary.

[*Latin ed. p. 505*]

505 FROM THE DECREES OF THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS: Letters concerning the administration of Holy Communion to religious families.

Most Illustrious and Reverend Lord, as a brother, I, on behalf of the official of this ecclesiastical court, have recently reported that in almost all religious families, certain days are prescribed in the statutes on which all must approach Holy Communion, and that many understand the catalogue of Communions in such a way that it is not permitted to anyone to receive Communion, even with the advice of a confessor, unless there is also formal consent from the Superior or Superioress.

With these matters explained, the following question is posed: What is the mind of the Church when it approves these statutes concerning Communion in religious families? Namely, are they to be understood as prohibitive, so that fewer Communions are celebrated, or as prescriptive, so that all strive to live in such a way that they may deserve to approach Communion, at least on those days?

Therefore, this Holy Congregation of Bishops and Regular Canons, having considered all things, responds: Negatively to the first part; and the judgment of the confessor regarding the permission to approach the Sacred Synaxis more frequently should remain a private matter, excluding the need for the consent of the Superior or Superioress; Affirmatively to the second part, provided that a reasonable cause does not prevent it.

These things I have wished to communicate to Your Eminence, to whom I earnestly pray for all good things and prosperity from the Lord.

To Your Eminence.

Rome, 4th of August, 1888.

As a most devoted brother,

I. CARD. MASOTTI,

ALOISIUS, BISHOP,

Prefect.

Secretarius.

[*Latin ed. p. 506*]

806 APPENDIX III. In which are recounted more of the Decrees of the

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Congregation of Sacred Rites. PARIS. The Most Reverend Lord Cardinal Hippolytus Guibert, Archbishop of Paris, presented the following to the Sacred Congregation of Rites, requesting a suitable resolution or declaration: I. Since in the City of Paris, according to the statutes of the Municipality, no procession is held outside the Church, the clergy, who are obliged to attend a funeral, can never enter the house of the deceased, in order to carry the body to the parish church with the ceremonies and prayers prescribed in the Roman Ritual; but the body, placed on a hearse, is carried in silence to the Church, followed by relatives and others who accompany the funeral. To receive the body, the clergy stand at the door of the Church, with a cleric holding a cross and another ministering blessed water. There, the Antiphon "Si iniquitates" and the Psalm "De Profundis" are said; afterwards, the Psalm "Miserere" is omitted, and the Responsory "Subvenite" is sung, and the rest is performed as in the Ritual. Indeed, it has become customary in more solemn funerals for the aforementioned Psalm and Antiphon not only to be recited, but also to be sung with solemn tone, while the body is received at the entrance of the Church, and the crowd, which sometimes accompanies the funeral, enters the Church itself. It is requested that this custom may lawfully be maintained. II. In the Archdiocese of Paris, it has become customary to celebrate Masses or Vespers, as the case may be, either before or after noon, for deceased infants. The Mass, whether of the day or votive, is said according to the rubrics, and the Vespers, with singing, are of the day, or votive from the Little Office of the Blessed Virgin. After the Mass, or the singing of the Vespers, the antiphon "Hic accipiet" and the rest are said, as in the Roman Missal. Therefore, it is requested that this custom, which is most acceptable to families of deceased infants and greatly conducive to piety, may continue to be maintained. The Sacred Congregation of Rites, having carefully considered these requests, reported by the undersigned Secretary, and having heard the opinion in writing of another of the Masters of the Sacred Ceremonies, decided to respond as follows: To I. Regarding the custom concerning the order of funerals in Paris, as it is explained, it can be maintained. To II. Affirmative, but a votive Mass should be celebrated.

[*Latin ed. p. 507*]

To the Appellants. And thus it was declared and permitted. On the 8th of February, 1879, in PARIS. Whereas the Most Reverend and Most Reverend Lord Cardinal Hippolytus Guibert, Archbishop of Paris, inquired of the Sacred Congregation of Rites: Whether, in the Masses celebrated before the Most Holy Sacrament exposed to public veneration in the Archdiocese of Paris, it is permissible to admit the Faithful to Holy Communion outside of Mass, and whether, at least, considering the custom, and with the greatest favor to piety, such a practice may be tolerated? The aforementioned Sacred Congregation, upon the request of another from the

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Masters of the Ceremonies of the Apostolic See, in response to the report of the undersigned Secretary regarding both questions posed, answered: Negatively. And thus it responded and decreed. On the 8th of February, 1879, in COLOGNE. The Reverend Father John Ludwig, priest of the place commonly called Gibelsrath, in the Archdiocese of Cologne, humbly requested a solution to the following doubt from the Sacred Congregation of Rites: Does the Pastoral Rule of the aforementioned Archdiocese (published in the year 1870 by the order of Joseph Clement, Archbishop of Cologne) permit the priest to use only one unction and an abbreviated formula in the administration of the Sacrament of Extreme Unction when necessity or contagion requires it; namely, in can. 507, which is defended by Benedict XIV in his work *De Synodo Dioecesana*, book 8, chapter 3. Given this, it is asked whether it is permissible, in granting the General Papal Absolution to avoid contagion, to use the shortest formula, which is found in the Roman Breviary, printed in Rome in the year 1843, and which reads as follows: "I grant you a plenary indulgence and remission of all sins. In the name of the Father, and of the Son, and of the Holy Spirit. Amen." And the aforementioned Sacred Congregation, in response to the report of the undersigned Secretary, decreed: Affirmatively, in this case. And thus it decreed. On the 8th of March, 1879, in NIVERNE. The Reverend Father Stephen Anthony Lelong, Bishop of Niverne, presented the following to the Sacred Congregation of Rites, humbly requesting a suitable declaration or resolution, namely: 1. Can a Bishop, by ordinary right, grant permission to celebrate even several Masses on any given day in public chapels or oratories of pious communities, even those that do not have a door? 2. In chapels or oratories of pious communities, which, although they do not have an entrance on a public road, nevertheless serve the daily exercises of the entire community? 3. In chapels or oratories that belong to private individuals, but which are public or semi-public?

[*Latin ed. p. 508*]

508 APPENDIX « III. in that sense in which they have access, of the Ingreschians, who otherwise would not hear Mass on a public road or near a road, or at least with great difficulty; the public one, so that it may always be permitted to anyone who wishes to enter.

2° in two churches in the same town of La Roche, when a single priest is present to serve both, and yet, without detriment to religion, Mass is celebrated only in one;

3° in the same church, when otherwise a considerable portion of the parishioners would not hear Mass;

4° when it is very useful, but this second Mass is necessary so that the faithful may more easily and frequently communicate.

The Sacred Congregation of Rites, referring to the aforementioned Secretary, responded as follows to these requests:

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Ad 1. The Bishop shall use his right in all the cases mentioned.

2° in the public chapels of pious communities, that is, those whose door is open on a public road or in an area communicating with a public road, and which are open to those who live there;

3° in chapels or oratories within pious communities, when they do not have a public chapel or oratory in the aforementioned sense, as, for example, in seminaries?

Ad IV. Assuming that the Bishop has already obtained permission from the Holy See, may he grant his diocesan priests permission to celebrate Mass twice on Sundays or holy days of precept in oratories or chapels that have been approved by the Holy See or by the Archbishop, provided that, because of the distance from the parish church, this second Mass may be beneficial to the parishioners?

Therefore, the Sacred Congregation of Rites declared as follows:

On March 8, 1879.

[*Latin ed. p. 509*]

APPENDIX: "x OP PIDEN. The Master of Ceremonies of the Cathedral Church of Oppiden humbly requested a solution from the Sacred Congregation of Rites to the following question: Whether a Bishop can, on Holy Saturday, confer the higher Orders not pontifically, but privately, in one of the public chapels within the Cathedral, situated not far from the choir and the presbytery; and whether, after the Communion of the ordinands, he can also administer the Holy Sacrifice to the faithful, the solemn Conventional Mass not yet having been celebrated, but at the same time that the Prophecies and other Offices are recited in the choir by the Chapter and the clergy? Therefore, the Sacred Congregation of Rites, having heard the opinion of another of the Masters of Ceremonies of the Apostolic See, considered it fitting to respond to the aforementioned question in the following manner, through the undersigned Secretary: "No, to the first part; with a proviso regarding the second." And thus it responded. March 8, 1879. CONGREGATION OF THE CISTERCIAN ORDER. According to the Ritual of the Cistercian Order, all those who have professed in this Order, while in danger of death, are to receive first the Sacrament of Extreme Unction, and then the Viaticum. However, since in the Monastery of Vallisdomicellae of the aforementioned Order, located in Barcelona, such a practice does not prevail, the present Confessor of that Monastery humbly inquired of the Sacred Congregation of Rites: Whether it is permissible for these same religious to receive, deviating from the order prescribed by the Roman Ritual, first Extreme Unction, and then the Eucharist or the Viaticum? And the same Sacred Congregation considered it fitting to declare, through the undersigned Secretary: "It is permissible." And thus it declared and responded. March 8, 1879. CALAGURITAN AND

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GALCEATEN. The Most Reverend Bishop of Calaguritan and Galceatensis humbly proposed the following question to the Sacred Congregation of Rites for resolution: The Feast of Saint Joseph, the Blessed Virgin's Spouse and Patron of the Catholic Church, which, by the decree of Pope Pius IX, was elevated to the rank of a Double of the First Class, and which falls between Palm Sunday and the fifth day of the week of the Lord's Supper, so that the Feast of the Annunciation of the Blessed Virgin is transferred without obligation for hearing Mass and abstaining, is it to be transferred according to the rubrics of the Breviary, or is it to be given precedence over the Feast of the Annunciation?

[*Latin ed. p. 510*]

APPENDIX III. The Sacred Congregation of Rites, having considered the matter with the written opinion of another of the Masters of the Sacred Ceremonies, decided to respond as follows: Affirmative to the first part; Negative to the second. And thus it responded and ordered that it be observed. March 8, 1879. BERGAMO. To the Most Reverend Lord Alexander Valsecchi, Bishop of Tiberias, and Auxiliary Bishop of Bergamo, the following questions were proposed to the Sacred Congregation of Rites for resolution: Question I. In the Acts of the Church of Milan, page Y, among those things prescribed in the Instruction for Diocesan Congregations, the following are found: "Then the solemn Mass shall be celebrated by the priest with the assistance of ministers... that solemn Mass shall be offered for the deceased buried in that church or cemetery... or for the Holy Spirit, if the Vicar prefers..." It is therefore asked whether such a Mass can take place during the current Office of the double rite, or only when the rite, namely the semi-double rite, permits it? Question II. Can the Bishop prescribe a solemn votive Mass for the Holy Spirit in each parish church on the occasion of the election of the Supreme Pontiff, and after the election, a Mass for thanksgiving, as was done in the Diocese of Bergamo last year? And the same Sacred Congregation, having heard in writing the opinion of another of the Masters of the Sacred Ceremonies, decided to respond in writing to the report of the aforementioned Secretary: Regarding I. The aforementioned Mass cannot be celebrated except on days permitted by the Rubric, or by a special indult. Regarding II. Affirmative in this case, especially considering the custom. And thus it responded. March 8, 1879. MECOACANEN. The Master of Ceremonies of the Church of Mecoacanen in North America humbly presented the following questions to the Sacred Congregation of Rites, earnestly requesting their resolution: I. Can a church be consecrated which cannot be surrounded from the outside by the Bishop, because the civil authority does not permit any external religious act? II. Is it permissible to recite the prayer ordered by the Superior on Sundays of Passion Week and in the weekday Masses up to and including the Fourth Day of the Greater Week, and within the Octaves of Easter and

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Pentecost? Furthermore, the Sacred Congregation of Rites, having heard the written opinion of another of the Masters of the Sacred Ceremonies, approved the following response to the aforementioned Secretary regarding these questions:

[*Latin ed. p. 511*]

TO THE SUPREME HOLY OFFICE: The necessary and appropriate faculties must be requested for the dispensation in this case. TO THE SECOND: Affirmative, according to the rubrics and decrees. And thus He responded and wrote: On March 22, 1879. The aforementioned Secretary, having presented a report to His Holiness, Pope Leo XIII, regarding the aforementioned doubts of the Sacred Congregation, His Holiness granted the requested dispensation, but under this condition: that at least the rite, which must be performed outside the Church, be completed within the sanctuary itself or in another suitable place attached to the same Church. On the 27th of the same month and year. FROM ZACATECAS: The Most Reverend Joseph Mary, of the Refuge, Guerra, the current Bishop of Zacatecas in the Republic of Mexico, in North America, proposed the following doubts to the Sacred Congregation of Rites, namely: I. When the procession with the Blessed Sacrament is held in the evening, rather than in the morning, on its feast day or during the Octave, is it permissible for this established custom to be allowed in some churches in this region? II. If the route of the aforementioned procession is not longer, is it permissible, as custom has established in these regions, to stop once or twice, every 500 meters, during the third or fourth station, while the hymn "Tantum Ergo" is sung with its verse and the prayer is recited at the altar? III. When the Holy Communion is administered to the faithful outside of Mass, must the priest recite the "Confiteor," or rather, only the minister? And to the extent that it is negative regarding the first, can at least this be permitted or tolerated? IV. The Office of the Most Holy Heart of Jesus, which is recited in the church in Mexico on Thursday after the Octave of the Most Holy Body and Blood of Christ, is that of which the hymn for the Vespers and Matins is "Quicumque Christum." Indeed, in some more recent Breviaries, two Alleluias are added in the Responsories of the Hours, as during the Paschal season. Therefore, it is asked whether these Alleluias should be added or omitted. The Sacred Congregation of Rites, having heard the opinion in writing from another of the Masters of the Ceremonies of the Apostolic See, considered it appropriate to respond to the aforementioned doubts, as presented in the report of the aforementioned Secretary, as follows: TO THE FIRST: Affirmative: however, in the Cathedral, another, at least brief, procession should not be omitted, after Mass, within the confines of the church. TO THE SECOND: The custom can be tolerated. TO THE THIRD: Negative, unless there is a complete lack of a suitable minister. TO THE FOURTH: Nothing should be changed. And thus He responded. On March

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31, 1879.

[*Latin ed. p. 512*]

512 APPENDIX MAZARIAN. The Most Reverend Monsignor Carmelus Valenti, Bishop of Mazaria, having observed in his Diocese certain customs which are not entirely in conformity with the rubrics and the decrees of the Sacred Congregation of Rites, and knowing that it will not be easy to abolish them, since they are confirmed by the long-standing habits of the people, he deemed it his duty to inquire of the aforementioned Sacred Congregation whether it is permissible to tolerate them. These customs are as follows:

I. On the Sunday of the Passion, a table is usually displayed showing the souls who are suffering in Purgatory, for whose suffrage the Office for the Dead is recited, with absolution given at the tomb, and with the mournful sound of trumpets.

II. On some festive day during the time of the Passion, when there is a gathering of the people, such as on the feast of the Seven Sorrows of the Blessed Virgin, an image proper to the feast is displayed, uncovered by any veil.

III. Both on the Friday of the Greater Week, and during the time of spiritual exercises or the preaching of the Word of God, which usually takes place during the time of the Passion, and on the Saturday of the Greater Week, images of the Crucifix and of the Blessed Virgin Mary are displayed for the veneration of the faithful, both day and night.

IV. The key to the urn or capsule in which the Most Holy Eucharist is kept is entrusted to one of the more respectable laymen, even if he is still young, so that he may perform some service for the benefit of the church from Friday to Saturday of the Greater Week.

V. On certain days established by some Archpriests and Parish Priests, the Candelas, Ashes, Palms, and the Baptismal Font are blessed, and afterwards another priest sings Mass, as is also the custom on Sundays, when the sprinkling of blessed water is performed by a priest different from the one who is about to sing Mass.

VI. Archpriests and Parish Priests are accustomed to wear the stole in all functions, as are also the Masters of Ceremonies and parochial chaplains, except when administering the Sacraments.

VII. It is the custom, both among Canons and Beneficiaries, and among other priests, although they enjoy no privilege, to wear a ring, which they do not remove even during the time of Mass.

Therefore, the Sacred Congregation of Rites, after careful consideration, with the undersigned Secretary present, decided to respond as follows:

To I: The decrees are to be observed.

To II and III: The decrees are to be observed, especially those of January

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16, 1649, concerning points 2 and 3.

To IV: The key to the capsule in which the Most Holy Sacrament is kept, should be entrusted to the priest who will celebrate the sacred function the following day, or, if this is not possible, it should be kept in the sacristy; and the decree of Naples, dated June 14, 1845, should be observed.

To V: The decrees of Pinerolo, dated September 1, 1838, concerning point 2, and of Liburnen, dated September 23, 1848, concerning point 8, are to be observed.

To VI: The general decree of September 7, 1816, is to be observed.

To VII: The decree of Bahlen, dated May 23, 1846, concerning point 6, is to be observed.

And thus it was written and decreed.

March 31, 1879.

[*Latin ed. p. 513*]

513 CONSTITUTION OF HIS HOLINESS, POPE LEO XIII, CONCERNING THE GRAND SEMINARY OF QUEBEC. LEO XIII, POPE. For some time, that part of the Canadian region, which is called Lower Canada, has attracted the attention of the Roman Pontiffs, so that the Catholic cause might flourish there for the private and public good. Indeed, from the time that repeated migrations from Europe brought a greater light of humanity there, Pope Clement X established the Episcopal See of Quebec, which is regarded as the parent of the dioceses that originated from the French colonists in the northern regions of America. Subsequently, Pope Pius IX, in the nineteenth century, bestowed the title and dignity of an Archbishopric upon it; and after twenty-five years, Pope Gregory XVI established the ecclesiastical province of Quebec. Moreover, We have also endeavored to accomplish more; for, considering the increasing number of the faithful, We deemed it advantageous to the Catholic cause if that province were divided into two; and therefore, not long ago, We granted to the See of Marianopolis, or Mont Royal, the archiepiscopal honors and rights, and We assigned to it, as was fitting, its suffragan sees. The provident solicitude of the Apostolic See towards the faithful of that region was not content with these measures. For, as soon as circumstances permitted, it turned its attention to the proper and solid instruction of young people. Indeed, our predecessor of blessed memory, Pope Pius IX, at the request of the Bishops of the Province of Quebec, readily cooperated in the founding of the Catholic University of Quebec. To this University, We granted all legitimate rights through Apostolic Letters issued on the Kalends of May in the year 1876: We ordered that the Cardinal Prefect of the Sacred Congregation for Propagating the Faith should be its patron, and the Archbishop of Quebec its Chancellor. By the same Letters, We granted this academy (which is called Lavallé, from the name of the most pious prelate) the faculty of

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conferring doctors' degrees and other academic degrees in all disciplines; and the Bishops of the Province were urged and encouraged to incorporate their seminaries and colleges with it; and the same prelates were charged with the care of overseeing and preventing anything that might be contrary to...

[*Latin ed. p. 514*]

514 Letters revealed that certain elements were alien to the faith or were corrupt in the doctrines, morals, or discipline of the University. In the same year, in order that sound doctrine might flow more abundantly and widely to many, and also that the region of Mont Royal, a distinguished city, might receive special honor, it was decided by the Holy Congregation, for the propagation of the Christian name (whose decision had been approved by Our Predecessor), that, with schools established as auxiliaries in Mont Royal, the Lavallian Athenaeum should also have a branch there, in which a professor would exercise his teaching ministry. It was then decreed that all disciplines should be taught there, according to the same rules, so that these schools would be under the Supreme Council by which the Lavallian Academy is administered and governed, and under the vigilance of the Bishops of Lower Canada, with the Archbishop of Quebec presiding. Finally, the office of Vice-Chancellor was entrusted to the Archbishop of Marienopol by Us. From this, a not inconsiderable benefit has resulted for the fuller education of young people. For there, men of the greatest learning perform the task of teaching, many of whom have been educated in the Gregorian University, in Our Seminary in Rome, and in the Urban College, and through their efforts, the studies of the sciences, especially Theology and Philosophy, are cultivated there, restored to the doctrine of St. Thomas Aquinas, which We have endeavored to restore in all Catholic colleges and schools. But, as is customary in human affairs, from the variety of studies and opinions, some disagreements and disturbances arose; which, if they had not been suppressed promptly by the authority of this Holy See, could have seriously undermined the stability of this beneficial institution, and could have caused fear that the hoped-for and expected fruits might perish. Indeed, some were seized by the desire to have more and separate Academies; and the minds of young people, distracted from the pursuit of learning, began to be drawn into contrary studies and dissenting opinions. Nevertheless, although these matters were discussed in various ways, we have learned that the Lavallian Athenaeum of Quebec still flourishes and enjoys happy prosperity; and that the schools of Mont Royal are so constituted that nothing is lacking in them for the complete education of young people who wish to be imbued with knowledge of divine things, law, medicine, and the arts. For this reason, we cannot but greatly congratulate the Venerable Brothers, the Archbishops and Bishops of Lower Canada, and other ecclesiastical and lay men and faithful, who

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have contributed their efforts and resources to promote and enhance this most useful work, and those who, having heeded the exhortations of this Holy See, have endeavored to associate other Colleges and Gymnasia with this Athenaeum.

[*Latin ed. p. 515*]

LETTERS, which are contained within the boundaries of both provinces. For it is fitting that there should be a common method for teaching and establishing youth in both, and thus that stronger and closer bonds be formed, uniting the faithful of this region. Since nothing is more dear to Us than to see this union of souls strengthened day by day, and so that that Athenaeum, which possesses such power and utility for fostering it, may remain steadfast, We earnestly urge the Venerable Fathers, the sacred prelates of the Canadian province, to continue to assist with their pastoral zeal the Archbishop of Quebec, so that nothing harmful may infect that most honorable seat of learning, and to watch over it diligently. Furthermore, whatever has been enacted, decreed, and determined concerning the University of Laval by this Apostolic See and by its authority, We declare to be approved and confirmed; and We declare that this University of Canada, being sufficiently equipped and staffed, is fit to provide for the proper and complete instruction of youth, and We will not permit another Catholic University to exist in that region, which has the right to confer academic degrees. As for the branch located in Mount Royal, We wish it to be preserved as another seat of the same University, and that the teaching of the Laval University shall be exercised in Mount Royal. A Pro-Rector shall be designated for this branch by the Bishops of the province of Montreal, who shall present him to the Council that governs the University; and he shall not be removed except for reasons approved by those same Bishops. The Council of the Laval University shall exercise its authority, either in its seat in Quebec or in its seat in Mount Royal, according to what is granted to it in the Royal Charter. However, in order to better promote peace and harmony between the Council and those who administer the branch in Mount Royal, We decree the following, of which We have no doubt that the Council, out of its devotion to the Apostolic See, will faithfully observe. In the branch in Montreal, professors and deans shall be chosen according to the custom now observed in each faculty, and shall be recognized and received by the aforementioned Council, unless the Archbishop of Mount Royal intervenes to prevent their admission. Once admitted, they may be advanced in rank by the Council, provided that the reasons for their removal are approved by the same Archbishop.

[*Latin ed. p. 516*]

516 LETTERS. In that faculty which is called the faculty of arts, and which contains the studies of letters, the power and authority to choose

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professors belongs, whether from both Orders, the secular and the regular, or from laymen, as necessity has dictated and circumstances have required. We deem it best to maintain the custom currently observed in adorning the tables, which are called programs, in which, indeed, the prescribed method is to present experiments to those who seek the bachelor's degree in the faculty of arts, so that, as in the city of Mont Royal, they are presented with the consent of those who manage the affairs of the colleges. It is fitting that this custom cannot be changed unless a change is approved by the Delegates of those same colleges, and by those who have succeeded to their positions. The right and care for preparing other programs belong to the Doctors of the individual faculties, both in Quebec and in Mont Royal, with the rules and prescriptions contained in the Statutes being observed; and likewise, these programs, after the will of the Doctors of the faculties to which they belong, and of those who have the power to act in their name, may not be changed. Since a college exists in Mont Royal, founded by Saint Mary, which is governed by religious members of the Society of Jesus, and which is distinguished by the excellent instruction of its teachers and the attendance of its students, We, so that no special privileges granted to that Society for a long time by the Apostolic See are entirely revoked, benignly grant that the members themselves, through an examination, may take the experiment of their students, and that they may provide a written testimony to those whom they have approved, by which they may be declared worthy of those degrees of honor, which are conferred upon young people of equal merit by the University of Laval in the colleges affiliated with it. Upon presentation of this testimony, a diploma will be granted by the Council, which governs the University, by which the students of that same University are honored as having attained that degree. The Bishops of both provinces of Quebec and Mont Royal shall meet annually to discuss the instruction and discipline of the university; and they shall, with common consent, decide all matters which it is necessary to determine regarding these matters. We are confident that their prudence will ensure that any seeds of discord that may arise will be promptly eradicated, and that the University will always flourish with new and increasing merits. Furthermore, since from the very beginning, the most powerful Queen of England has endowed this institution with authority and patronage.

[*Latin ed. p. 517*]

LETTERS 817: We are strengthened with certain hope that this solid foundation will not fail him in the future, and we also trust that the favor and support of the distinguished men who govern the federated states of Canada, and those who preside over the government of Quebec, will always be readily available to him. Above all, we are persuaded that the Catholics of Canada, having set aside their disagreements and uniting their efforts, will constantly strive to ensure that this esteemed academy remains

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as enduring as possible, and that it may enjoy ever-increasing prosperity and success. In order that this may happily come to pass according to our wishes, we establish, command, and decree the following, declaring that these present Letters are firm, valid, and effective, and that they shall have their full and complete effect, and that those to whom they pertain shall fully and completely comply with them; and that, accordingly, matters pertaining to these matters must be judged and decided by ordinary and delegated judges, including Auditors of the Apostolic Palace, even in cases; and that they shall be declared void and null if, by anyone exercising any authority, they should be attempted to be altered in any way, knowingly or unknowingly. Notwithstanding this, as it may be necessary, without prejudice to our and the Apostolic Chancery's rules regarding legal matters, nor to any Apostolic Constitutions and Ordinances, or other special provisions worthy of individual mention, which may be contrary to the foregoing. Given in Rome, at St. Peter's, under the Fisherman's Ring, on the 2nd day of February, in the eleventh year of Our Pontificate, 1889.

LETTER FROM HIS HOLINESS POPE LEO XIII CONCERNING THE GREAT CATHOLIC COLLEGE OF THE NORTH AMERICAN FEDERATED STATES, ESTABLISHED IN THE CITY OF WASHINGTON.

Your endeavors, which are a source of great joy to Us, to safeguard Catholic piety, to care for the needs of your Dioceses, and especially to establish institutions that promote the proper education of both clergy and lay youth, and the instruction in all branches of divine and human knowledge according to the norms of faith, have been brought to Our attention. Therefore, We have received with great pleasure the letters that you sent to Us at the end of the past year, in which you informed Us that the work of establishing a great college or university in the city of Washington is proceeding happily, so that this year, in the matter of theology...

[*Latin ed. p. 518*]

518 The documents concerning the doctrines, having been duly presented to our attention, and having been sent to Us by the Most Reverend Father John Keane, Titular Bishop of Iassensis, and rector of the aforementioned Lyceum, we have gladly accepted the statutes and laws of your University, which you have submitted to our authority and judgment. In this matter, we deem your plan most praiseworthy, which, in the hundredth year since the establishment of the ecclesiastical hierarchy here, establishes a lasting monument and memorial to the auspicious beginnings of the University. Therefore, having readily undertaken the task, we have entrusted the laws of your University to select members of the Sacred College of Cardinals, in order that they may examine and consider them, and that they may report their judgments to Us. Now, having received their opinions, and gladly assenting to your requests, we

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hereby, by these letters, approve the statutes and laws of your University, and grant to it the rights and privileges of a just and legitimate University. Therefore, we grant to your Academy the power to advance students whose learning has been proven by examination to the degrees which they call "Academic," and also to confer the laurea in philosophy and theology, as well as in Canon Law and other disciplines in which degrees and laurea are customarily conferred, provided that they have completed the required courses of instruction within the Academy. We also desire that you, our beloved son, and you, Venerable Brothers, diligently oversee the proper conduct of studies and the discipline of the students in your University, either through yourselves or through chosen prelates among you, whom you deem fit to be entrusted with this task. Furthermore, since the city of Baltimore is the principal seat of the Episcopal Conference of the United States of North America, we grant to the Archbishop of Baltimore and his successors the responsibility of acting as the supreme moderator or chancellor of the Academy. We also desire that the methods of instruction, or the programs of the disciplines taught in your University, especially those of philosophy and theology, be presented to this Apostolic See for examination, so that they may be approved and ratified, and that the courses of instruction in the same University be so organized that young clerics and laymen alike may have the opportunity to fully nourish their noble desire for knowledge. In these courses of instruction, we also desire that a school be established for the teaching of Canon Law and of ecclesiastical public law, a teaching which is especially important in these times.

[*Latin ed. p. 519*]

We recognize the importance of these matters. Furthermore, we urge you all to ensure that your seminaries, colleges, and other Catholic institutions are enrolled in your University, as indicated in its statutes, always safeguarding the freedom and well-being of all. In order that more abundant fruits and diverse disciplines of the great Lyceum may extend to many, it pleases us that those who have completed these studies, especially theological and philosophical studies, as the decrees of the Third Plenary Council of Baltimore state, as well as those who wish to devote themselves to beginning or pursuing these courses of study, should be admitted to these schools. For this great University, indeed, not only pertains to increasing the glory of your nation, but also promises abundant and salutary fruits, both for the propagation of sound doctrine and for the defense of Catholic piety; therefore, we are confident that the faithful Americans, by reason of their great spirit and the generosity of their support, will not fail to contribute to the splendid completion of this undertaking. Moreover, through these letters, we declare to the University of Washington that no further institutions of this kind should be established without the prior consultation

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of the Apostolic See. We believe that what we have declared and established in these letters will be a clear demonstration to you of the concern and solicitude with which we are affected, so that the glory and prosperity of the Catholic Religion may increasingly grow in this region. Furthermore, we earnestly pray to the Most Merciful God, from whom all good things, every perfect gift, come, that your endeavors may have a happy and successful outcome, fulfilling the hopes of your people, and that this may come to pass, we impart to you, our beloved Son, and to you, Venerable Brothers, and to the entire clergy and faithful under your care, the Apostolic Blessing, a sincere witness of our affection, for the furtherance of all heavenly blessings, in the Lord. Given at Rome, near Saint Peter's, on the 7th of March, in the year of Our Lord 1889, in the twelfth year of Our Pontificate.

[*Latin ed. p. 520*]

520 LETTERS from the Most Holy Lord Leo XIII to the Bishop of Brescia (i). Know that We have received your letter with gratitude. In it, We have seen a new demonstration of your episcopal vigilance, as well as the singular zeal with which you strive to honor Us most affectionately, and to safeguard the rights of the Apostolic See. And We see that, if the opportunity arises, you are eager to seize it, and you will not easily let it pass, as was recently demonstrated by that work which you yourself mention: and which, if it displeases you, as you write, rightly displeases you. Indeed, no one prudent and just can be found who would not agree with you, with great willingness. For what could be more outrageous than to have matters of great importance, matters linked with the authority of the Supreme Pontiff and with the very freedom of the Apostolic office, boldly brought back into the power of private judgment, and publicly judged by a private individual, who has no authority for such a thing? But the cause has been judged by the very Pontiff himself; for He has made it clear, not once nor obscurely, that He must both think for Himself and consider the opinions of others. Is it permissible, with due regard for the dignity of the office, to suggest otherwise to the multitude? To give such advice is to act more arrogantly and more presumptuously, and to seek to show the Apostolic See what is best to do. Indeed, such discussions often come down to this: to make concessions and to acquiesce in new and changing circumstances. It is certainly true that what is done by force and injustice, We would have ratified by Our will; just as it is clear that this state of affairs, into which We are compelled for so long, is entirely alien to the dignity of the Roman Pontiff, and contrary to His true freedom, so that We are not accepting it, but are compelled to endure it out of necessity, as it may please the highest and most provident Governor of human affairs, God. Furthermore, the civil authority of the Roman Pontiffs has not been violated by the will of the people, but rather by the audacity of wicked sects: those who seek to overthrow the sacred power. The occasion for these letters was given by a

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work (1) The work, entitled "Rome and Italy, the reality of things," in Latin "Roma et Italia, atque rerum sinceritas." For the Bishop of Brescia, seeing that this work was being spread, and that under the guise of concern for the Church, it presented judgments and opinions that were less than correct regarding the rights of the Holy See, was rightly concerned about the harm that such a book could cause. Therefore, he sent letters, full of affection, to the Most Holy Father Leo XIII, in order to comfort his mind, as a loving son. To whom the great Leo responded with the noble letters here related.

[*Latin ed. p. 521*]

Letters [LITTERAE] have caused ruin through civil authority, so that, as if that defense had been conquered and overthrown, they direct their efforts and their attacks against that very [institution]. The fact itself speaks how openly and stubbornly they attempt this. Therefore, it is most fitting and highly beneficial to fortify minds diligently against writings of this kind, all the more because, for the most part, they impose themselves upon the multitude under the guise of modesty and the appearance of religion. — We bear witness to the favor and benevolence of heavenly gifts, and We impart the Apostolic Blessing to you, Venerable Prelate, and to your clergy and people, abundantly in the Lord. Given at Rome, near St. Peter, on the 21st of March, in the twelfth year of Our Pontificate. FROM THE HOLY CONGREGATION OF THE COUNCIL OF NEAPLES FOR MATRIMONY. On the 15th of September, 1888. SUMMARY OF THE CASE. Martina Laura Aurigo, born of an illicit union with Tarvisio on November 1, 1866, was placed in the institution for exposed children of that city. From the baptismal record, it is gathered that the aforementioned Martina was reclaimed on April 16, 1868, by her own mother, Anna Columba, concubine of Michaelis Del Giudice, affirming that she was the mother of Martina, and Michael Del Giudice was the father. He always denied being the father of Martina, although he received her into his home and took care of her education. However, Michael Del Giudice never permitted Martina to unite herself in marriage with any of the many who sought her hand, because he had already decided in his heart to give her to his brother, Ianuario Del Giudice, who was in the military, as a wife, and he always urged this upon his daughter. When Martina reached the age of eighteen, the father proposed the premeditated marriage of his daughter; and when Ianuario...

[*Latin ed. p. 522*]

522 In Naples, Martina could not legally enter into marriage, either civilly due to a lack of dowry, nor before the Church due to an impediment of consanguinity. The wicked father of Martina persuaded her to accompany him as a concubine. Martina, upon learning this, presented herself before the priest Francis Popolo, and, revealing her father's intentions and also the feelings she herself, as she said, was obligated to

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express, she requested that he take steps to obtain a dispensation from the Supreme Pontiff regarding this impediment. That priest obtained from the Sacred Penitentiary the faculty to dispense in foro conscientiae from said impediment, which had remained entirely hidden until the celebration of the marriage, as testified by the general vicar of the Neapolitan Curia; and on August 30, 1884, the marriage was celebrated before the Church. But it is important to note that Martina always abhorred the aforementioned marriage, as is evident from the petition sent to the Supreme Pontiff, and from her own and other witnesses' testimonies. Consequently, she never felt any affection for her betrothed. Indeed, her aversion became so great that she was more prepared to inflict death upon herself than to live with her betrothed. This aversion was the cause for the marriage remaining unconsummated, and it led her to petition the Supreme Pontiff for a dispensation concerning the marriage that had been celebrated but not consummated.

A SYNOPTIC DISCUSSION: THE THEOLOGIAN'S OPINION.

Before addressing the matter, the theologian deemed it necessary to offer some preliminary observations: Martina Laura Amigo, in her humble petition sent to the Most Holy [Pope], humbly requests that His Holiness deign to grant a dispensation concerning the marriage that has been celebrated but not consummated, between herself and Ianuarius Del Giudice. On January 20 of the year 1886, she approached the Neapolitan ecclesiastical court, requesting that, in accordance with the form of the rescript of His Holiness, a process be initiated to obtain the aforementioned dispensation for two reasons: 1. because the marriage remained unconsummated; 2. because of the impediment of consanguinity.

[*Latin ed. p. 523*]

In Naples, there existed an impediment between the woman and her intended husband; and although a dispensation concerning this impediment of consanguinity had been obtained from the Sacred Penitentiary, this dispensation is nevertheless to be considered null, because the dispensation was requested concerning an impediment that was, in fact, public, as the Reverend Father Salvator Tarantino, the woman's procurator, asserts. However, from the process records, it is not sufficiently clear that the impediment of consanguinity was truly public before the celebration of the marriage; indeed, the contrary is demonstrated by four witnesses, namely Maria Columba, a widow from Stornati, and Philomena Fede, representing the bride; Peter d'Alessio, and January Ruggero, representing the groom, who all, under oath, affirm that Martina Laura Aurigo and January Del Giudice are neither parents nor relatives. The Reverend Father Franciscus Popolo, writing to the Most Reverend and Reverend General

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Vicar concerning the faculty to bless the marriage in that place, does not mention the woman as the daughter of Michael Del Giudice. The Reverend Gabriel M. Rinonapoli, parish priest of the Church of the Apparition of the Holy Virgin, states: "I made the proclamations according to law; and no impediment was presented." Therefore, if the impediment in that place is hidden from the witnesses and the parish priest, and if no one among the faithful, having heard the canonical announcement in the Church, denounces the aforementioned impediment to ecclesiastical authority, the reason why the impediment in that place could be considered public before the celebration of the marriage is obscure. But even if some doubt remains concerning the publicity of the impediment, as the woman's procurator affirms, and consequently, doubt remains concerning the validity of the dispensation; nevertheless, since reasons are present to obtain the grace of the dispensation, it seems more fitting to conclude that the marriage in that place was only valid. Then, the consultant proceeded as follows: although it cannot be proven from the process records that the woman ever cohabited with her intended husband, nor that she ever spoke with him, either separately or in the presence of others; indeed, from the same records...

[*Latin ed. p. 524*]

In Naples, this result has been obtained; however, it is not difficult to prove that the marriage was only valid, and not consummated, when it clearly results from the testimonies of the parties and witnesses, confirmed by oath, and, which is more important, is confirmed by an examination of the woman's body, according to the instructions issued by the Sacred Congregation of the Council on August 22, 1840. Therefore, the spouses, in order to demonstrate that their marriage remained valid, must, according to the decree of Pope Gregory XIV, book IV, on chastity and similar matters, title XV, chapter V, entitled "Laudabilem," under oath, declare that they have never become "one flesh" through carnal copulation, and confirm this with the testimony of seven witnesses, relatives or neighbors of good reputation; but these two points are derived from the procedural acts. And the very actress, Martina Laura Aurigo, when questioned whether, immediately after the marriage contract, she joined her husband in habitation and bed, and what followed, answered under oath: that the marriage was not consummated, and she recounted everything, including the attempts the husband made to consummate the marriage, and how she, by weeping or resisting firmly, and finally by fleeing from the husband, prevented the consummation. The testimony of Martina Laura Aurigo is entirely consistent with the testimonies of the witnesses, so that it can be safely concluded that she spoke the truth. And although the testimony of Ianuario Dei Giudice, the bride's fiancé, confirmed by oath, does not seem entirely consistent with the bride's testimony; nevertheless, he himself con-

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fessed that the marriage remained only valid. When asked whether, after the celebration of the marriage, he engaged in conjugal acts in order to procreate a child, he gave an evasive answer. But although he does not utter a single word about the consummation or non-consummation of the marriage; nevertheless, from the bride's testimony, it is clearly inferred that Ianuario, when the bride herself asked him about the consummation of the marriage, responded negatively.

[*Latin ed. p. 525*]

NAPLES 525. But what Ianuarius did not confess in the act of examination, he affirms by oath in the letter presented through his appointed attorney, along with the attorney's mandate. In it, he declares that his marriage with Martina Laura Aurigo was never consummated; but remained only a ratified union. The actress's testimony, concerning the lack of consummation of the marriage, is strongly corroborated by witnesses under oath, who, having touched the written documents and having given the customary oath, with one voice testify that the actress owes them complete fidelity. If the testimony of witnesses under oath from the opposing side is desired in the process, there is nothing surprising. For Ianuarius, legally summoned to present the witnesses under oath through his attorney Albert Marotta, on July 4th of the year 1886, responded that he had lived a wandering life, like a soldier, and that he could not present friends as witnesses, and that he would gladly send a messenger to attest to his own defense. Another argument, no less strong, to prove that the marriage was not consummated, but only remained ratified, is the examination of the woman's body, conducted according to the most strict instructions by the Sacred Congregation of the Council. After this examination, Doctors, Midwives, and Obstetricians, with one voice, testify that the woman is entirely a virgin. Regarding the veracity of the witnesses, doctors, and obstetricians presented in the process, there is the testimony of His Eminence, the Archbishop of Naples, in his letter to His Eminence, Prefect of the Sacred Congregation of the Council, dated May 7th of the year 1887. Therefore, since both parties testify under oath that they were never made one flesh through carnal intercourse; and this is confirmed by witnesses under oath, relatives, and neighbors of good reputation; moreover, since it is established by the examination of Martina Laura Aurigo's body that she is chaste, and the midwives, under the sanctity of their oath, have testified to this, it seems possible to conclude that the marriage of Martina Laura Aurigo with Ianuarius Del Giudice was only ratified and not consummated.

[*Latin ed. p. 526*]

In Naples, among the principal and just causes by which the grace of dispensation may be obtained, according to Theologians, is "grave fear of a great scandal that will follow," because, as Sánchez states in book II, divi-

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sion XIV, number 8, this leads to great damage to the common good, and serious quarrels often arise from it. Saint Alphonsus de Liguori, among the just causes for the dissolution of a valid marriage, mentions the imminent scandal. Caietanus, in his response to Paris, article II, says: "Discord arising between spouses, without hope of remedy, and with their consent, is a sufficient cause for restoring peace between them, by removing that bond which was the cause of the discord, and to avoid homicides, which desperate spouses can easily commit." Finally, Bonacina, volume I, question III, point XI, number 4, states: "The Supreme Pontiff can sometimes grant a dispensation in a valid marriage to remove grave discord, to remove scandals, etc." In fact, Eugenius IV granted a dispensation because of hatred that arose between spouses, as Bargasius states in *de irreg.*, page 6, title *de spons.*, number 74. Truly, does not a great scandal truly arise, unless a dispensation is granted concerning a valid marriage? On the part of the actress towards Ianuarius, there is the greatest repugnance, as she herself testified under oath; and she affirms that this repugnance will always endure. On the part of Ianuarius, although he was formerly inflamed with love for the actress before the celebration of the marriage, after the separation, it is found impossible for him to live with her. Furthermore, that there is truly no hope of reconciliation is also testified by some of the witnesses. Given therefore the aforementioned disposition of the minds, and with the marriage bond remaining, does not everyone see that the actress remains in many dangers for both temporal and eternal life? Iuvenis is Aurigo and poor. What prevents her, if she finds another lover, from uniting with him and leading an immoral life? The corruption of the best is the worst. Until the present day, Martina Laura Aurigo is a young woman adorned with the best morals, according to the testimony of all the witnesses.

[*Latin ed. p. 527*]

NEAPOLITANA 527: His own; but if, through his poverty, or an attachment to the matrimonial state, he is corrupted, his corruption will undoubtedly be the worst. And from this manner of acting, how many scandals will occur? Furthermore, although the consent of the parties, by itself, is not a sufficient cause to dispense a valid marriage, as many Theologians teach; yet, with other concurring causes, it can be a reasonable cause for dispensing. Caietanus, in volume I, opuscula, tractate 18, quaestion 1, asks, "Whether discord arising between spouses is a reasonable cause for dispensing (a valid marriage)," and answers, "I believe that it is, with the consent of the spouses added." And he gives the reason: "Firstly, for the sake of souls, lest young people fall into adultery, or be forced to remain separated perpetually. Secondly, to restore peace between them, especially because the end of marriage is unity." But both spouses must request this grace from the Supreme Pontiff for the reasons adduced by Caietanus. To all this is added the doubt, of which we have spoken in the foregoing,

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regarding the impediment of consanguinity, whether the aforementioned impediment was concealed or made public before the celebration of the marriage; and this doubt can be one of the causes for more easily obtaining the grace of dispensation concerning a valid and unconsummated marriage.

OPINION OF A CANONIST. In the first place, I believe it should not be passed over in silence, said the Consultor, that while the acts were being drawn up, the procurator of the woman had requested of the Neapolitan Curia that a process be instituted concerning the nullity of the marriage, which was contracted in virtue of a dispensation granted by the Holy Penitentiary over the impediment of consanguinity of the first and second degrees, a dispensation which she maintained had been obtained fraudulently, and therefore was of no weight. But the general vicar, who was to institute the process concerning the non-consummation of said marriage, as a delegated judge, and not to decide on the nullity or validity of the same, concerning which he was to pronounce judgment, as an ordinary judge in the first instance...

[*Latin ed. p. 528*]

In NEAPOLITANA, he received documents, and included them in the records, but only in order to obtain a dispensation more easily. However, the arguments presented concerning the aforementioned procurator, in his own judgment, are not suitable for confirming his assertion. For he states that the impediment of consanguinity between Laura Aurigo and Ianuarius Del Giudice was certain and publicly known, whereas, on the contrary, in the supplication presented to the Sacred Penitentiary, it was stated to be doubtful and concealed. But it is not certain that Laura Aurigo is the daughter of Michaelis Del Giudice? This is the crux of the matter. It is generally agreed among canonists that proving filiation on the father's side is difficult; especially if it concerns illegitimate children. For a legitimate son, marriage serves to prove his filiation, and the law favors the legal presumption, defining a son as one who is of his own or another's right (*filium definimus ff. de his qui sunt sui vel alieni iuris*). This presumption is so strong that it does not admit of proof to the contrary, except in cases expressly excepted by the law itself, concerning a son, etc. But illegitimate children cannot prove their filiation except, by recourse to various presumptions, which more or less conclude the matter, of which the principal ones are the following, as stated by Barbosa in *vota decr. vot. Xli.*: the act of having a child baptized and designating godparents; the joy that the parents experienced at the birth of the child; the provision of sustenance; the naming and treatment of someone as a child; the confession of the father; and finally, public reputation. If all, or at least the principal ones, concur, they establish the child in a quasi-possession of his filiation. Truly, no one can fail to see that in our case, several of these, and the most

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conclusive ones, are lacking. For, scarcely had she been publicly presented in the baptismal font, where she received baptism, and was given the name and surname of Martina Laura Aurigo, and she remained there for three years. Therefore, the arguments that could support the filiation of Laura are lacking: the act of having her baptized and designating godparents; the joy that the parents experienced at her birth; the naming of her as a daughter; and the confession of the father.

[*Latin ed. p. 529*]

NEAPOLITANA 529, and to this alone, the provision of sustenance and public reputation contribute. This provision of necessities and the institution of a lavish education, if considered separately, indeed suggest a strong presumption of his [Laura's] filiation. For, as Monald states in the Constitutions, 123, number 14: "It does not hinder that the education and treatment [received] do not prove the possession of filiation by the said agent, from which even those who are not sons are sustained in the house, because it is responded to that the aforementioned opinion is true when only sustenance has been provided; but when, along with sustenance, other things are added, such as being clothed differently from servants, being sent to schools, being kept in the house for a long time, and other things which are usually done for one's own children, as has been done in our case, then all these things taken together well prove the possession of filiation." These, as I said, if considered separately, indeed suggest a strong presumption regarding Laura's filiation. However, if consideration is given to the motive for such meticulous education, and the perverse end to which the great expenses incurred in her luxurious clothing were directed, undoubtedly the strength of this argument is greatly weakened. For, as is clearly evident from the sworn testimony of Laura herself, as well as from the statements of the aforementioned Vicar General, it is clear that this man [Laura's supposed father] had, from her very childhood, intended Laura to be the concubine of his brother, who was wasting away, driven by the hope that through her virtue and the refinement of her character, she would lead him to a better life, who was dissipating his considerable salary among games and prostitutes. For this reason, he rejected several opportunities that were offered to him to properly place his daughter through a legitimate marriage, and he disregarded Laura's own pleas, who abhorred this dishonest concubinage above all else. This course of action is so contrary to the duties of fatherhood that it is difficult for anyone to believe that she is truly his daughter. Furthermore, public reputation also clearly supports the filiation, as stated in Acta, Volume XX, page COXLIX, number 34.

[*Latin ed. p. 530*]

In Naples and according to common tradition, as Barbosa states in the cited work, rumors often circulate concerning matters that are either true

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or very close to the truth. However, if it is certain that a rumor is based on a false foundation, it loses all probative force. Indeed, the neighborhood was so convinced that Laura Aurigo was the daughter of Michael Del Giudice, and they called her "Del Giudice," to the extent that they genuinely believed that a legitimate marriage had taken place between her parents, and that she was legitimately born: that is, they were completely unaware of the circumstances that accompanied her birth and early childhood, as can be seen in the pamphlet published by Laura's representative. Therefore, since this public rumor and the neighborhood's conviction are based on a false hypothesis, they cannot create any presumption in favor of Laura. Briefly: there is a probability that Laura Aurigo was born of Michael Del Giudice, but there is no certainty, and therefore, this impediment of consanguinity was rightly presented to the Penitentiary as a matter of doubt. Regarding what the representative objected to in the second place, namely that the impediment of consanguinity to the Penitentiary was presented as hidden, and to the extent that it was hidden, it was dispensed from according to the usual formula of the Holy See concerning such matters; but, on the contrary, it was publicly known, I shall, briefly, explain my opinion. It seems to me that the impediment, being doubtful, cannot be either materially or formally public. It cannot be materially public, because for this, it is required that the fact from which the impediment arose actually occurred; for example, that the cohabitation from which the impediment of affinity arose actually took place, etc., and in our case, that Michael Del Giudice actually fathered Laura Aurigo. Since this is not certain, the impediment cannot be materially public. But neither can it be formally public, because such notoriety presupposes a matter and is based upon it. From these points, I believe it must be concluded that there is no proof of the nullity of the marriage in this case. Having briefly outlined these points, the consultant proceeded to discuss the lack of consummation of the marriage and the reasons that might move the mind of the Holy Father to grant a dispensation.

[*Latin ed. p. 531*]

NEAPOLITANA §31 Concerning the matter of consummation, the concluding arguments are presented through procedural documents, so that all doubt regarding the opposite is completely excluded. The judicial proceedings in the great Court of Naples were carried out according to the Constitution of Benedict XIV, and the instructions issued by this Holy Congregation; for first, the Vicar General, who was appointed by the Archbishop, was the delegated judge in this case, and he summoned the defender of the validity of the marriage ex officio, who, under oath, promised to diligently and honestly fulfill his duty, and who presented all the documents and signed them in his own name. On the appointed day for the hearing of the party alleging, Laura Aurigo appeared before the judge, with the defender of the marriage present, who, after taking a prior oath to speak truthfully,

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answered the questions posed by the defender of the marriage and by the judge; the summary of which is as follows. She stated that she was born in Treviso, out of wedlock, between Colombo and Michael Del Giudice, and that she was exposed in the public orphanage of that city, as is noted, and there she was baptized, receiving the name Laura Martina Aurigo. After three years, she was recovered and brought to Naples, where her parents established their home. She stated that she was captivated by the love of her paternal uncle, Januarius Del Giudice, a military man, who even then repeated to her that she would one day be his; these displays of affection angered the girl, because she was averse to him. Over time, in order to free herself from this vexation by her uncle, she requested to be included among the "sisters of charity," schools which she attended; but this request could not be fulfilled, either due to a lack of age, or, more probably, due to a lack of legitimacy of birth. Finally, having reached the age of eighteen, when she saw that the insistence of her uncle to grant her marriage was becoming more urgent each day, and that her parents, despite her objections, had given their consent, and that she herself was being held in increasingly strict custody to prevent her from forming other attachments, she consented to this union, although, since they could not legally contract marriage due to the lack of the dowry required by military law.

[*Latin ed. p. 532*]

532 In Neapoli, iura conscientiae poterant esse tuta per matrimonium ecclesiasticum. Sed, ob infelicem condicionem vitae in qua se invenit, plena timoris, quia apud viros militares, cum quibus debuit versari ut concubina, incestuosa habetur, numquam consensisse est ad consummationem matrimonii. Testes, septimae manus ab actrice prolati, amplissima testimonia praebuerunt de eiusdem honestate atque veracitate, et ex aliis informationibus certum est cognoscere quod quae actrix cum iuramento exposuit vera sunt. Hi testes, omni exceptione maiores, affirmati sunt a Domino Archiepiscopo in sua epistola ad Sacram Congregationem. Citatus etiam fuit Ianuarius Del Giudice apud Curiam Teatinam, et eius relatio, licet aliquantulum dissentiat a prioribus testimoniis, praesertim quoad condormitionem, tamen cum eis plenissime convenit quoad inconsummationem matrimonii, et maximam mulieris aversionem erga eum. Invitatus ad testes septimae manus exhibendos, respondit se non posse praebere septem personas, quae pro ipso spondere possent, cum ratione sui officii perpetuo debeat huc illas pervagare. Sed verius dicere debuisset, se magno angore timere ne matrimonium suum in publicum prodiret, et ad aures superiorum accederet, quo in casu graviter punitum iri sciebat. Qua de causa, iam obtinuerat a Curia Neapolitana ut ex tribus annis proclamatio fieret. Hic autem defectus septimae manus ex parte viri, cum non procedat ex malitia vel studio mulieris, nullum praeiudicium ipsi

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afferre potest, prout pluries declaravit Sacra Congregatio, et novissime in Varsavia, die 14 Maii 1887. Hic unanimis consensus utriusque contrahentis, nec non septimae manus, magnam dubitationem praesumptionem induit, quod matrimonium in casu non fuerit consummatum. At veram, certam atque plenissimam probationem nobis suppeditat inspectio corporis mulieris. Haec inspectio, ad tramitem notissimae Instructionis Sacrae Congregationis, Concilii, adamussim peracta fuit. Tum matronae, tum obstetrices, tum medici, iudicia protulerunt de integritate mulieris.

[*Latin ed. p. 533*]

NEAPLES 833. Proceeding to another extreme, he states that he believes there are weighty reasons that can move the mind of the Supreme Pontiff to grant a dispensation, and these are: 1. That the mutual consent of the contracting parties, without any other cause, can be a legitimate motive for a dispensation, as held by Cardinal Hostiens in chapter [unspecified], by Fagnani in chapter [unspecified] concerning Constitutions and affinities, by Cosci in *De separ. th.*, chapter 43, chapter 2, and by other canonists; 2. That a cause is found in excessive aversion, especially of the woman towards the man. This antipathy, which she had conceived in her heart from her youth, has grown so much after the marriage that she was even considering obtaining poison to take her own life, unless her husband provided for her own family. But these doctors unanimously declare that such a motive is sufficient for a dispensation. Another argument is provided by the danger of incontinence in which this woman finds herself. She is a young woman of 22 years, endowed with a strong will and a fervent imagination, to whom the best opportunity has been offered to marry another man. The consulter also adduced other causes for obtaining the dispensation.

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE OFFICE. The marriage, which, in the year 1884, on August 30th, she solemnly contracted with a military officer, Ianuarius del Giudice, in the age of thirty years, Martina Aurigo, aged twenty-eight years, seeks to have declared invalid, alleging incompletion. The cohabitation and bedfellowship of Ianuarius are not denied by Martina, but she expresses antipathy. However, the aversion and disgust that she manifests are not dissimilar to true aversion. Indeed, Martina, although she claims to be influenced by the importunate persuasions of Michaelis dei Giudice, her father, does not deny that she freely consented to this marriage. Moreover, she confesses that she requested a dispensation from the Sacred Penitentiary through the priest Franciscus Popolo, concerning a hidden impediment that perhaps existed in the first and second collateral degrees of consanguinity. In confession, she also spoke of Ianuarius.

[*Latin ed. p. 534*]

In Naples, it was well known that Martina had been very familiar with

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Martin from her youth, and that she had not done anything, after the marriage was completed, that would cause aversion, should she be unexpectedly brought before the public. Someone might ask, what is the purpose of these details, if Martina's virginity is to be proven according to the law? But this is the work, this is the labor. For three midwives were appointed by the judge to investigate Martina's virginity. Firstly, they did not perform their assigned task separately, but entered the room together, in which Martina was staying with two matrons. Secondly, they did not provide a written report of the examination, but were subjected only to an oral examination; although the instruction from the Sacred Congregation, dated August 22, 1840, expressly states: "Regarding the examination of the body, each person must proceed separately..." After the examination, each midwife individually reported on the signs of virginity or corruption that resulted from the examination, whether certain and what signs and arguments of an intact or corrupted hymen existed, and whether any deception could have been used to simulate virginity. Then, based on these matters, they would provide more precise depositions in response to the questions, which would be sealed and signed and presented by the defender of the validity of the marriage. No less important is the testimony of a seventh person. For, as for the others, witnesses were needed who were men, whom Martin refused to summon. With this course of action, Januarius, who was no less averse to the marriage than Martina, showed that he did not wish to appear wiser than the blind. With all of the above premises, the following questions were proposed to be resolved: I. Does the nullity of the marriage exist in this case? And II. Should the Holy See be consulted regarding a dispensation from a marriage that is valid but not consummated in this case? RESOLUTION: The Sacred Congregation, after discussion on September 15, 1888, decided to respond: Regarding I, provision will be made in the second [part]. Regarding II, affirmatively.

[*Latin ed. p. 535*]

5*35 REGIA. OF THE PATRONAGE AND THE BENEFICE (1) DECEMBER 10, 1888. Sess. 14, cap. 9, Concerning Reforms. SUMMARY OF FACTS. In the month of May of the year 1884, the parish of Saint Nicholas was vacant due to the death of the priest Guidetti. The Bishop, acting as the sole patron, presented the priest Aloysius De Medici to the Holy See, to which the institution belongs according to the founding bulls. After a hearing before the Sacred Congregation of the Council in January and May of 1885, the priest De Medici did indeed obtain the apostolic letters of collation; however, he did not obtain canonical institution. Moreover, due to a renewed danger in September and December of 1887, it was declared in the plenary assemblies of the Sacred Congregation of the Council that the spiritual care of the parish of Saint Nicholas actually belonged to the patronage, and furthermore, it was determined that the priest De Medici

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was not suitable for the benefice due to a lack of qualities required by the sacred canons, and therefore, patrons were to be invited to make a new nomination and presentation. This judgment was ratified and confirmed by the Most Holy Father on December 19, 1887. However, the presentation has not yet been made, since this matter was connected to another of no less difficulty, concerning which we must now consider only what pertains to the patronage. Nevertheless, in the presentation of the priest De Medici, the Ordinary of Regia had stated that only one exercise of the patronage was being asserted; the other patrons, namely the families of Cagliari and Cassoli, had renounced their patronage, having sold their rights (which, namely, they had held before the pseudo-civil law concerning the suppression of patronage) to the Hebrews De Benedetti; and these, having accepted this title, have already occupied the goods of the collegiate church of Saint Nicholas (for the patronage extends both over the prebend and over the entire chapter of Saint Nicholas), and have also attempted to interfere with the prebend. (1) See Recueil, Vol. XVII, 526, and Vol. XX, 443, where this matter was related and discussed more fully before the Sacred Congregation.

[*Latin ed. p. 536*]

§36 REGENCY: — It happened that they had been frustrated in their desire; this occurred solely because the civil tribunals had hastened to declare the parish benefice of St. Nicholas to be truly parochial. However, one member of the Oassoli family, namely Charles, the Count, together with his mother and sister, from the very beginning, while professing their assent to the nomination of the priest De Medici made by the Bishop, nevertheless claimed that, as patrons, they should be acknowledged, and that, as poor people, they should be assisted with funds from the revenues of the benefice. The Sacred Congregation of the Council responded, preserving their rights to act both concerning the patronage and concerning the requested assistance, as far as and in accordance with the law. Then, Count Charles appealed to the Apostolic Datary, requesting that his wishes be fulfilled. The Datary, noting that the benefice of St. Nicholas, after all expenses, had 9,600 livres annually, and that only one-third of that could be reserved; further noting that, besides Count Charles, there were two other patrons, namely the Bishop and the priest De Medici himself, who had been elected at that time; therefore, only one-third of the total amount could be assigned to the priest. In addition, in accordance with the usual practice of this tribunal, an annual pension of 1,200 livres was established for him, and this obligation was included and noted in the apostolic briefs that were then granted to the priest De Medici. The Count was not satisfied, who, claiming to be either the sole or at least one of two patrons, and affirming that the benefice, after all expenses, accumulated 18,000 livres annually, requested that the pension be increased to 6,000 livres, and that

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both cases be examined by the Sacred Congregation of the Council. Therefore, the case was presented in June of 1886 under the following questions: 1. Whether and with what weight the right of patronage belongs to the patron in this case, and 2. Whether and in what amount the assistance should be increased for him in this case. The Sacred Congregation of the Council responded: "Let the matter be delayed, and let the new Bishop be heard, who should, through public edicts, warn those who have an interest and take their views into consideration. The purpose is: to present the rights of the Ordinary, and to report whether the genealogy of De Medici is authentic."

[*Latin ed. p. 537*]

REGIEN. 537 Concerning the benefits and revenues. After the death of Count Cassoli, several others had asserted their right to the patronage of the benefice. The matter was again brought up for consideration on September 10, 1887, although the Bishop had been protected by his patron, and, in turn, Count Charles by his procurator; nevertheless, it was again determined, "that with the same documents, the question should be presented; but after a review of all those reasons which several others, besides the Bishop and Count Cassoli, were putting forward to claim the patronage for themselves." This was done on February 18, 1888. And then, the Sacred Congregation, having reformed the first question in this manner, namely, – whether and by whose favor the right of patronage in this case is established – Ad I. By the favor of the Ordinary alone. Ad II. Negatively. Furthermore, throughout the course of the entire case, those who were found to have a claim to the right of patronage in the praepositura (deanery) were certain members of the Zoboli family, the Medici family, Count Charles Cassoli Lorenzotti, Countess Victoria Cassoli Pancaldi, Countess Cassoli Gattini and her brothers, and the Monesi family. The Cagliari family, although they might have had a part in this controversy, abstained, as they do even now, perhaps because they are aware of the criminal sale of the patronage they made, and they are ashamed to appear before the Most Eminent and Reverend Fathers. The rights in question were as follows: Four brothers from the noble Zoboli family, namely, Bishop Philip of Comacchio, Leo, James, and Christopher, at the end of the 15th century, proposed to erect a collegiate parochial church of Saint Nicholas in Regiae, which was already under the patronage of the family, and to found there a praepositural dignity with eight canonries; which they obtained through apostolic bulls of Sixtus Papa IV; reserving, however, the right of patronage and the right of presentation, both for the praepositura and for the minora (lesser) benefices, to James, Christopher, and Leo, and to their heirs and successors

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forever. From this foundation, two principles followed:

[*Latin ed. p. 538*]

REGIA. 1. It is not the case that a single, unique right was established, but rather a threefold one. For, according to the commonly accepted doctrine of Pitonius (De contr. patr. alleg. 13, n. 7 and following, and alleg. 76, n. 8-18), from the very beginning, the founder reserved the right of patronage to several distinct individuals and lineages; and as many distinct patronages exist as there are lineages, and there is no right of accretion among them. Conversely, if, from the beginning, a single, unique right was established, then, if several individuals succeed to the right of the founder over time, there is a right of accretion among them, because it is a single right, and the heirs, even if many, represent a single patron in solidum. 2. From this nature of the foundation, it follows that the patronage in the diocese is neither purely hereditary nor purely gentile; but mixed. For he is called "who has been reserved for heirs and successors," according to Ferraris, v. iuspatr. c. 1, n. 9. Furthermore, in order to succeed in this patronage, both qualities, namely hereditary and agnatic, or of inheritance and blood, are absolutely required, according to the same Ferraris, loc. cit., with common consent. Furthermore, – permission is requested if the following matters are mentioned, which are already well-known: this may, however, be useful, both for the sake of memory and because the matter is again being brought into controversy today. – Leonellus, the founder, and his son, John, gave their voice to the Episcopal See of Regia; and this donation was first approved by apostolic bulls from Pope Pius IV, and then it was recognized and confirmed by two plenary judgments, the first before De Rubeis, Oradino, and Robusterio, and the second at the beginning of the 18th century before Priolo, Caffarello, and Ab Iob, and finally, around the year 1840, the Sacred Congregation confirmed it by a quadruple judgment. However, the Bishops of Regia, from the beginning, were accustomed to cede the right to themselves to one or the other of the Zobuli family for a time, through investiture; and then, and precisely after the plenary judgment of the 18th century, upon the death of the last investee, John Zobuli, who was also a Provost, they retained the exercise of the patronage for themselves, and exercised it by themselves, although sometimes, for the sake of peace, with others.

[*Latin ed. p. 539*]

REGIEN. 539 patrons were assembled to determine the alternating appointments to be made. Christopher, one of the founders, who seemed to have lacked descendants, bequeathed his right to Timothy, the son of James. This is evidenced by the deliberations recorded in the total judgment of the year 1718, where the matter was considered settled and confirmed. Finally, James, the third founder, bequeathed his right to his eldest son, Sigismund,

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and to the most worthy and senior males of his lineage. This, too, is fully established by the same judgment. It was discovered shortly after the foundation that three rights had been transferred: one from Leonellus to the Episcopal See of Regiae, the second to Timothy, and the third to Sigismund, Timothy's brother. At the beginning of the 18th century, when the aforementioned total judgment was frequently cited, it was found that Leonellus, or the Bishop, had transferred his right through investiture to John Zobuli, the prelate; that the right of James, or Sigismund, had passed through Sigismund the younger to certain Zobuli of Parma; and finally, that the right of Christopher, or Timothy, had passed to Cornelia Zobuli, the only daughter and heir of Ernest. Thus, when the question was raised before the Sacred Rota, as often happened in similar cases, regarding the validity of a certain presentation, the Sacred Rota, with a unanimous judgment, which was executed by a decree on July 4, 1710, approved and admitted the presentation made by Cornelia Zobuli, or by her mother and guardian, and by the prelate John, against the objections of the Zobuli of Parma, who favored another priest. The Sacred Rota firmly maintained that the right to nominate belonged "to the aforementioned Marchion and the prelate John, as well as to the Countess Cornelia de Zobulis for two of the three parts; namely, from the lineage or right of Christopher to the aforementioned Countess Cornelia; and from the lineage or right of Leonellus to the then-Bishop of the city of Regiae, or to his episcopal see, and to those invested by him."

[*Latin ed. p. 540*]

540 REGISTRUM. •Ea, and thus, the aforementioned marquis was appointed by John, to the said Bishop, in the vestment. "However, it did not concern, nor was it necessary for the resolution of the cause, to define to whom, among the various branches of the Zobuli of Parma, the voice of James belonged. Nevertheless, it seemed to the Holy Auditors to favor the aforementioned marquis, John, who, together with James, the founder, and the others, was connected to Sigismund, and moreover, could be considered more worthy within the same family of the Zobuli of Parma, even if he might appear excluded as a priest. Of the Zobuli of Parma, the last recognized was the priest Nicholas Zobuli, who, having obtained the prebends, died on June 26, 1802, and left his inheritance to Marianna Cagliari, from whom was born John Cagliari, and also Anthony and Emilius Cagliari, who sold the patronage to the Jews. Furthermore, John Cagliari, the holder of the voice of James, appears in the cause, which was brought before the Holy Congregation in this century. Also, Anthony and Emilius Cagliari acted as patrons and were recognized as such when they sold their rights. Therefore, it seems reasonable to hold that the voice of James was ultimately transferred to the family of Cagliari. Whether, however, the brothers Cagliari, due to the simoniacal sale of the patronage, were deprived of

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the exercise of their rights, or whether they were deprived of the rights themselves, was debated in the final page of the Congregation. But the Holy Congregation, having given its resolution, clearly stated that it did not follow that the rights of the family of Cagliari were established. Regarding the voice of Christopher, from a judgment recorded in the registry of the eighteenth century, it was found to have been established in Cornelia Zobuli. Cornelia Zobuli married Charles Cesi, from whom were born Ferdinand, Annibal, and Eleonora. — This Eleonora, in a quadruple judgment held before the Holy Congregation in this century, was recognized as the universal heir of the rights of Cornelia Zobuli, that is, the patronal voice of Christopher. Eleonora then married Paul Cassoli-Lorenzotti, from whom were born George, Aloysius, and Victoria.

[*Latin ed. p. 541*]

REGIEN. 5£i. Furthermore, George's granddaughter is Aloysia Cassoli Gattini, for she is married to a certain Cattini, who, along with his brothers, is pressing for the recognition of his claim to the patronage. Aloysius, however, has two sons: Count Charles Cassoli and Ade laides, who were the principal actors in this cause, and for whom the Procurator is also fighting in the present proceedings. Finally, Victoria Pancaldi, who is the same Victoria mentioned above, is the daughter of Paul Cassoli Lorenzotti and Eleonora, and is connected to the noble Pancaldi family. Moreover, although there may be some doubt concerning Eleonora's legitimacy, it was entirely uncertain in the previous legal action whether and to whom among all of them Eleonora's right to the inheritance would be recognized. Legitimate birth certificates clearly demonstrated that all of these were Eleonora's descendants and were connected to her by blood. However, it remained entirely uncertain which of them would be Eleonora's heir, and no one had addressed this matter. Nevertheless, from the legal principles presented above and from the clear intention of the founders, both the hereditary and the blood relationship of the heir were demonstrated by the one who wished to claim the patronage. But there was a more serious objection. For George, as the general procurator of his father, Paul Cassoli Lorenzotti, to whom Eleonora had bequeathed her patronage rights before her death, had sold his patronage rights to the Jews De Benedetti. Thus, the same obstacle that hindered the Cassoli descendants also hindered the Cagliari family. This was not insignificant. For if the patronage is of a civil nature, then, according to Fargnap. 1, cap. 4, cons. 13, n. 2, although the actual patron, through his simoniacal sale, remains suspended from the exercise of his rights, the Church does not become free; and the sons, after the death of the criminal father, are instituted to the exercise of the patronage, for they are called by the founder and obtain their right from him, not from the simoniacal seller. But if the patronage is hereditary, as Fargnap teaches in the cited work, I, n. 10 and 15, it is completely lost

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through the simoniacal sale, and the sons are not entitled to it.

[*Latin ed. p. 542*]

542. In the matter of the restoration of rights, it is fitting and just: for the one who succeeds as patron is not properly and directly called by the founder, but is chosen and designated only by the testator. Furthermore, if the testator, for any reason, and therefore even if through his own fault, loses the patronage upon his death, he has nothing to bequeath to the heirs; and therefore, the Church becomes free. However, the matter in question concerns a mixed patronage, that is, both hereditary and of benefit; in which it is necessary, not only in favorable matters, but also in essential matters, to participate in the nature of both. But it seems essential in hereditary patronage that the right be transmitted to the testator who enjoys this right. In this matter, both the brothers Cagliari and Paulus Cassoli Lorenzotti appeared to have acquired this right through simoniac sale. Therefore, the Sacred Congregation had judged that the good right of the brothers Cagliari, but also of Paulus Cassoli Lorenzotti and his descendants, did not exist, even for this reason. As for the others, there was no need to investigate. For those who were called Zobuli, who had tried to assert their claim from the beginning, were not, in fact, connected by blood and kinship with the ancient Zobulis. Indeed, of the three founders, Christophorus lacked a descent in Linz. Leonellus had one son, Ioannes, but without any descendants. And one James had increased to two sons, Sigismund and Timotheo. But the last recognized descendant from Timotheo's lineage was Cornelia Zobuli, at the beginning of the 18th century; and the last from Sigismund's line was Nicolaus Zobuli, a priest and prelate, who died on June 26, 1802. Therefore, the modern Zobulis have nothing to claim from the founders of the collegiate church. Furthermore, Aloysius De Medici, another of those who asserted their claim, was properly connected with Sigismund through five female relatives, and through him with the founder James. However, the De Medici family is connected to the Zobulis through Catherine Zobuli, who in the mid-17th century was married to a Parisetti; and this woman, being separated from her family, carried no right with her, since men in this [family]...

[*Latin ed. p. 543*]

REGIEN. 543, the line then existing, had been reserved; hence, neither the House of Medici seemed to possess any legitimate right to claim it. As for the Monein family, it had been sufficiently proven through genealogical charts and other documents that they were connected to the "T i" lineage and, through that lineage, to James, the founder. However, even they, at the beginning of the 18th century, were connected to the Zobul family through a marriage: Camilla, a daughter, married Scaruffi. Furthermore, Camilla's father, Nicholas, assigned a certain sum of money to Camilla's children,

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and with the rest, he consolidated all his rights in a will dated October 26, 1693, in favor of his brother, Ernest. Ernest, in turn, was the father of Cornelia Zobul, to whom the court rightly attributed the full patronage, and from whom the Cassoli family descends. Therefore, the Monein family possessed no positive title to claim the patronage.

Given these circumstances, it was most advisable that the resolution from the previous meetings should state that the patronage, in this case, belonged "only to the Ordinary." However, this decision was challenged by both the Monein family and by Charles and Adelaide Cassoli.

A Synopsis of the Dispute. The Monein family presented nothing other than a portion of a will in which the brothers Ernest and Nicholas Zobul, the former being the father of Camilla, and the latter the father of Cornelia, were established as equal heirs. However, from the will of Nicholas Zobul, which the Cassoli family's representative produced, we know that Nicholas did not name his daughter Camilla, nor her descendants, as heirs; but rather, his brother Ernest, from whom Cornelia and the Cassoli family descend. Therefore, the document presented has no effect.

But greater matters were presented by the representative of Count Charles Cassoli. After presenting everything necessary to exclude the others, and which had already been addressed in the previous proceedings, he insisted on behalf of his client.

[*Latin ed. p. 544*]

544. REGISTRUM. From the original testaments, it is evident that Eleonora, to whom, in a quadruple judgment before the Most Holy Office, the possession of one of the three patronal rights was recognized in this turbulent century, namely the right of Saint Christopher, indeed, this Eleonora, as the highest testamentary dispositions indicate, bequeathed this right to her husband, Paul Cassoli Lorenzotti. This Paul, in turn, named his sons, George and Aloysius, as his heirs; and thus, he excluded his daughter, Victoria, who was married to Pancaldi, from the inheritance. Charles Cassoli and Adelaide are the children of Aloysius. Through this, the procurator seems to have corrected what he had previously omitted, and has established the hereditary quality in Charles and Adelaide. But he did not stop there; rather, proceeding further, he argues that the entire right of patronage has been vested in his clients. To this end, he first rejects the doctrine of Piton, and, citing the opinion of Fagnani, where, in page 1, canon 5, section 9, number 3, this illustrious canonist states: "Therefore, when, both in fact and in words, it is joined, it undoubtedly seems to enter into the right of increasing for an equal portion among all;" – from this, the procurator concludes, even in this case, that when the patrons are joined both in fact and in words, the right of increasing is granted among them. However, he adds that, due to a nefarious sale of the right of patronage, the family of Cagliari lost its share. Likewise, George, the brother of Aloysius,

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lost the portion which he shared with his brother, for the same reason. Therefore, these two patronal rights have been entirely accumulated in Aloysius, or, since he is now deceased, in the sons of Aloysius, Charles and Adelaide. Furthermore, it is alleged that Aloysius suffered a loss due to an unfair sale of the right of patronage. The facts, it is reported, proceeded as follows, according to the testimony of both the parish priest of Saint George and the Archbishop of Modena. Aloysius was afflicted by a serious illness, and had given a general mandate for business matters to the eldest of his sons, Ferdinando, the brother of Charles, who is now deceased. This Ferdinando –

[*Latin ed. p. 545*]

In the matter of case number 545, concerning an abuse of power, the unknown father met with his nephew, George, in order to carry out an unjust sale. The Archpriest and parish priest stated: "It is certain that Aloysius, because he would never have consented to an unjust sale, if he had been asked about it, since he has always been pious and obedient to the precepts of the Church." Therefore, the advocate concludes that the accused, namely Ferdinand and his father, George, should be justly punished, but that Aloysius, who was ignorant of the matter, and his son, Charles, should not be, and indeed it is clear that Charles fought for the defense of the prebend, so that it would not be usurped by the Jews along with the other benefits of the collegiate church. Having thus defended his client with two patronal arguments, the advocate, as is his custom, seeks to add a third, which belongs to the Bishop. He states that a donation made to the Bishop by the founder, intended to prejudice the rights of his successors, could not be valid. He omits to mention what he himself extracted from a document of this century, which he presented along with the original text, but did not accurately reproduce, and moreover, he interprets it outside of all context, indeed, contrary to or even against the immediate context. Thus, the advocate concludes the first part of his argument. Proceeding to the second point, he first states that the needs of the patrons cannot be denied; and then, citing numerous authorities, both of Doctors and of various religious Orders, he argues that "a pension of up to half of the revenues of the benefice can be established." These words are found in Caesenate, Pensionis, §. Furthermore, this was a decision made before the Sacred Congregation on February 23, 1822. Moreover, he argues that the revenues of the prebend do not amount to 9,000 livres, as the Bishop claims, but to 14,000 livres. He criticizes the fact that the expenses are too high, and that 1,000 livres are assigned for the maintenance of the buildings, and 2,600 livres for the expenses of worship and the pension of the coadjutor in a parish that does not exceed 5,000 souls. Therefore, he considers his client's petition entirely legitimate, in which he requests that the pension

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be increased to 6,000 livres, as stated in Aeta, Tom. XX, fase. COXLIX, 35.

[*Latin ed. p. 546*]

546. REGENCY. However, by law of division and reversibility, the right pertains to all of the family, namely, Charles, Adelaide, and their mother. This [person] is the procurator. Conversely, I will immediately examine what might be said against these points. And first, the case proposed by Fa gnano does not seem to apply to this matter; for in the institution of a patronage, if several patrons and lines are established from the beginning, these can indeed be said to be connected in substance, but not in words. Indeed, they are entirely divided, according to the received opinion of Pitoni. And this is confirmed in practice. For throughout the centuries, we find that three such voices have always remained separate, as readily demonstrated by the judgments of the sacred tribunals. Furthermore, it seems vain to argue that the donation of the voice of Leonelli to the Bishop is not valid, since the Holy Father has approved it with apostolic bulls, the Holy Rota has recognized it with a unanimous judgment, and the Sacred Congregation [of Bishops and Regular Canons] has confirmed it with a quadruple judgment in this century. Rather, what is reported concerning the hereditary succession and the innocence of Aloysius and Charles relates to the sale of the patronage, and these seem to be of greater importance. With these points noted, the following questions have been proposed for consideration: I. Whether one should adhere to or depart from the decisions in the first question in this case. II. Whether one should adhere to or depart from the decisions in the second question in this case. RESOLUTION. The Sacred Congregation, after deliberation on December 15, 1888, decided to respond: To I. Depart from the decisions; so that for one voice, the right of patronage belongs to the Bishop, for another voice, to Charles and Adelaide Cassoli, and for the third, the benefice is to be of free collation. To II. Increase the sum up to 2000 florins, and more.

[*Latin ed. p. 547*]

847 A PETITION CONCERNING ALMS FOR A SECOND MASS. September 15, 1888. Through a summary of prayers. A COMPENDIUM OF THE MATTER. In the preceding months of June 1887, Francis Bianchini, of the house at Colle, in the Diocese of Tudertina, bequeathed two hundred livres annually, stipulating that, on each day of festivity, a second Mass be celebrated in the parish church for the sake of his soul and the benefit of the people. However, no priest has been found who will attend and fulfill this bequest. Furthermore, the parish priest notes in his petition that the necessity of two Masses on days of festivity in this parish appears evident. For not only is the number of souls, exceeding 700, exceedingly great, but access to the church is also very difficult for many, and the smallness of the church, which is the only one and barely holds 300 faithful, necessitates the

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celebration of a second Mass on days of the year. This is also demonstrated by the fact that, in the past, there was always a chaplain for the celebration of the second Mass. Considering, therefore, the growing necessity of a second Mass, due to the increasing number of the people, and seeing the great detriment to the parish in not providing it, the present parish priest humbly requests permission to celebrate a second Mass, and through it, to fulfill the bequest of the deceased Bianchini. To these prayers, the Ordinary added commendatory letters of the following tenor: "We commend these prayers, for the parish of Colle, which has always had a second Mass on days of festivity, now needs it even more than in former times, since the number of souls has greatly increased, and now amounts to more than seven hundred." "We also testify that the parish endowment is so meager that it barely, or perhaps not even, suffices for the parish priest to live." For these reasons, we believe it can be granted."

[*Latin ed. p. 548*]

548 If it should please the Most Eminent Fathers, then the faculty of celebrating the Holy Sacrifice on festive days, and also the faculty of fulfilling a vow through a Mass offered twice, shall be granted. » *Disceptatio Synoptica*. Therefore, two graces are sought: one for offering the Mass twice, and the other for receiving an indulgence for offering the Mass twice. But with regard to the first, it must be observed that, whenever it is established by the reasons expressly stated in the Constitution, it is for the Bishops to grant permission for the second Mass to be celebrated. In cases where it is doubtful whether such reasons are present, and especially when these reasons are absent, but nevertheless a true and serious reason of necessity arises for offering the Mass twice, the judgment regarding a dispensation is, by its very nature, reserved to the Holy See. The reasons for offering the Mass twice, as indicated in the Constitution of Pope Benedict, are primarily these: that one and the same parish priest presides over two distinct parishes, or two separated congregations; or that the entire population of a single parish is unable to attend Mass at the same time, and no other priest is available. And so, the Sacred Congregation, in the case of Salman, on February 22, 1862, and in the case of Cameracen, regarding Masses for the people, on September 25, 1858, and in other cases, having considered the laws pertaining to this matter, it was referred to the prudence of the Most Eminent Fathers, who were to be guided by the parish priest and the Bishop. Regarding the second point, it is clearly established, based on the aforementioned Constitution of Pope Benedict and the reasons discussed above before the Sacred Congregation, that alms offered for the celebration of the second Mass are entirely permissible. Nor does the cause of the poverty of the parish invalidate this. Indeed, the cited Constitution states: "We observe," says the Pope, "that the parish priests, of whom we are speaking, can allege both utility and necessity, so that they may consider it per-

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missible for them to celebrate Mass twice in a day, even if another priest is present who is able to perform the sacred rite."

[*Latin ed. p. 549*]

TUDERTINA, in the year 549, decreed that those who celebrate Mass should not provide alms to the priest celebrating, for the Mass itself; they are in need, and therefore cannot offer this alms to another priest celebrating Mass. However, the Pontiff decreed that neither should be allowed to offer suffrage for the other. Indeed, suffrage is not granted: whatever may be the meaning of the term "suffrage," those who use it explain and understand it not as suffrage for the celebrant, but for those who hear the Mass. Furthermore, the necessity arising from poverty is of little benefit, etc." And rightly so: for to repeat Mass for the sake of gain would be a source of corruption, avarice, and simony, and would detract from the reverence due to this very sacrifice. Moreover, the people would not only be mocked and offended, but would also find scandal, and would easily come to despise the most holy and divine sacrament; which must be avoided at all costs. While the needs of priests can be assisted in other, more numerous, innocent, and canonical ways, as is well taught in the cited decree, number 12. Therefore, the Sacred Congregation, throughout its documents, when dealing with the possibility of repeating Mass, cautions that the second Mass should be celebrated without any payment whatsoever, as is evident from the documents of Cameracensis, cited in Brixiensis, March 3, 1855, and other more recent documents. Nevertheless, for the sake of truth, it should be remembered that the Sacred Congregation has sometimes permitted a priest who is to celebrate Mass to receive something, not indeed as an alms for the Mass, but on account of the inconvenience of an extraordinary journey, labor, or other external reason, as happened in Monasterien, July 11, 1845, and in Treviren, March 23, 1861, and more recently, on February 20, 1886, in Aprutinae, where the parish priest, for the second Mass to be celebrated in a distant oratory, was promised 15 tomoli of wheat, worth 140 or 150 lire; and the Sacred Congregation permitted both this grant, both of the offering and of the reception of emoluments; for in this case, as in other previous cases, it concerned a parish priest who was living very modestly and undertaking extraordinary labor.

[*Latin ed. p. 550*]

550. The Sacred Congregation of Rites appears to have always kept in mind the circumstances of Todi whenever the matter of allowing some form of profit to be derived from the second Mass has been discussed. (1) After these matters had been noted, it was asked what answer should be given in prayer. RESOLUTION. The Sacred Congregation, having considered the matter, decided on September 15, 1888, to respond as follows: Regarding the affirmative, yes, provided that another priest is found to

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celebrate the second Mass; regarding the rest, no. FROM THE SACRED CONGREGATION FOR BISHOPS AND REGULAR CANONS REGARDING PENSIONS IN BENEFICES. Dated March 15, 1889. SUMMARY OF THE MATTER. From the most remote times, the Bishops of the Royal Diocese of Emilia have striven to make the economic conditions of many of the benefices in that Diocese, which were entirely deplorable, more bearable, using the revenues of other churches, which were endowed with a more substantial endowment. Therefore, taking advantage of the opportunity, and with a prior episcopal decree, they imposed pensions on the parishes, burdened only for life. And those burdened with such a pension, not only accepted the decree of the Bishop, but also, after the canonical institution, were accustomed to present a formal agreement for the payment of the burden to the Curia, which would carry out a fair distribution among the poorer pastors. The Ordinary, who at that time governed the same Diocese, never imposed such pensions, except with the authority of the Apostolic See, for a few cases that occurred during his administration; and (1) Aprutina is found in Vol. XVIII, 544.

[*Latin ed. p. 551*]

REGISTRUM. 551. Quo formaliter constaret de aequalitate oneri. Solerti etiam cura studuit Antistes, ut ad pensionis solutionem excitarentur tardi; qui, opimis inspectis reditibus, quibus ditantur, facili ratione propria implere valerent onera, in auxilium quamplurimorum parochorum, qui omni destituentur commoditate, et miseriae aerumnis divexantur. Curae tamen et studia Antistitis felici caruerunt exitu quoad nonnullos morosos in solvendo: quinimo nonnullus, ex parochis pensione gravatis, eo pervenit, ut futili ratione, abscisse onera implere renuerit. Qua de re coactus fuit Antistes Apostolicam adire Sedem, ne frustra tempus et operam impenderet; et ut sanatio accederet expetivit decretis episcopalibus, per quae fuerant praedictae pensiones impositae. Decem et septem, ait Ordinarius, esse parochos pensione oneratos, et ex his septem tantum solutionem oneris integram non peregisse. Horum parochorum simul notulam exhibuit redituum; animadvertens, rationem qua impositae fuerunt pensiones, haud esse omnino regularem; sed ad antiquissimum remanere tempus et omnino manutendas esse ait; quia parochi hisce pensionibus sublevati, in actu concursus aut examinis tempore, easdem consequuti sunt, congruae, aut si minus, beneficii instar.

Disceptatio synoptica: EPISCOPI POSSUNT PAROECIIS IMPONERE PENSIONES. Animadvertere fuit non deesse doctores quamplurimos, qui tribuent Episcopis facultatem imponendi pensiones personales, seu ad vitam gravati. Inter alios recensendus est Fagnanus ad cap. Nisi essent 21 de praebenda. Nec obstat Constitutio Quanta f. r. Benedicti XIII: nam seu retentum fuerit, ipsam respicere tantum abusus illius temporis, contra quos evulgata fuit, seu eandem destitutam fuisse suo effectu primissimo,

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in facto nunc est quod Episcopi consueverunt, Apostolica Sede non reclamante.

[*Latin ed. p. 552*]

552. It is permitted to impose pensions on richer parish benefices in order to alleviate the needs of other parishes. This unusual practice is confirmed by the authority of the periodical *Acta S. Sedis*, Volume IV, page 78, in the note: "Bishops, by a long-established custom, impose pensions when bestowing benefices..." Therefore, more recent authors do not mention this constitution, and they attribute the power of imposing pensions to Bishops indiscriminately, whether concerning simple or particular benefices. This is further explained by Vecchiotti in *Liber 3, cap. 3, p. 39*: "Sometimes, however, the pension is not imposed on the benefice itself, but on the person holding the benefice, and therefore it is extinguished with the person's death, nor does it pass to the successor of the benefice. Several canonists, adhering to the text of *Nisi essent, cap. 21 de praeb.*, maintain that Bishops have the power to impose a temporary pension, because no section, division, or dismemberment of the benefice is made, since the pension is not imposed on the benefice itself." Furthermore, the authority of the Sacred Congregation is not lacking; for in a document of August 23, 1834, and in another of June 25, 1836, the Bishops are advised that, in order to increase the income of the parish priests, they can also unite, suspend, dismember, or impose an annual pension on chaplaincies or any benefices, except for those held by regular clergy. This opinion is also supported by Reiffenstuel in *Liber III, tit. 12, p. 4, n. 88*: "Although, speaking strictly, a Bishop or other bestower of benefices, inferior to the Pope, cannot confer a benefice subject to a pension to be paid, nevertheless, in a special case, and for a just and reasonable cause, a Bishop can also impose a pension, or at least establish one that lasts for the lifetime of the beneficiary, with the consent of that person, and with which the pension will be extinguished. This conclusion regarding the first part is certain; and it is evident from the rubric and text of the present title, where the rule is stated: benefices are conferred without diminution, along with similar things." The second part of this conclusion is held by the *Glossa in c-audivimus v. pensionem, de coli*.

[*Latin ed. p. 553*]

REGIEN. 583: Illusion. Detected by Innocent, *De cetero*, n. 7, and the Abbot, *ibid.* n. 2, concerning translets. Navarrus, *Consilia*, 43, n. 4, concerning simony. Garcias, p. 1, *De beneficiis*, c. 5, n. 295 and 296. Gonzales, *Ad regulas*, 8; Cameli, *Glossa*, 5, p. 5, n. 27, citing the *Rota* in Meliten, canon 6, March 1597, before the Most Reverend Merlino and others, frequently. Fagnanus, *C. Nisi essent*, n. 28, citing several others, and asserting that this is the most received opinion. "N. 89: The rubric

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and text of the present title do not prohibit: that ecclesiastical benefices be conferred without diminution, and similarly. Provided that the benefice is not burdened solely by such a pension, and thus the benefice is conferred without diminution; nor is there any division concerning the revenues of the same, since the beneficiary burdened receives all of them, although he may be obliged to give something to the Pensioner for the days of his life, or as long as he holds the benefice." Under n. 103, speaking of the Edict of the Datary of November 11, 1692, by which pensions on parish churches are prohibited, he says: "On the other hand, prohibiting that resignations or exchanges of parishes be admitted with the reservation of pensions for any favor and under any title, even the provision of sustenance; it can be answered in the same way as in the similar case concerning *Constitutio b. Pii V.*, which begins *Intolerabilis*, against confidences, issued on June 15, 1569. Barbosa, p. 2, *De officio et potestate Episcopi*, alleges 85, n. 11, citing Nicol. Garcias, p. 1, *De beneficiis*, c. 5, n. 313, and Fillucius, *Tractatus*, 42, *De pensionibus*, c. 3, n. 5, namely, that such words do not abrogate any faculty that had previously been lawfully used by the Bishops; but only that the imposition of a pension by the Bishops is prohibited, or punished, without a reasonable and just cause." Pensions in the matters required are not lacking, which the authors require, as a just and honest cause for this, so that they may be imposed. For pensions have been imposed on those burdened for life, and therefore are strictly temporary and personal. They are constituted in a determined quantity.

[*Latin ed. p. 554*]

854. REGULATIONES. Non ad proportionalem partem reditus, sed ad summas fixas, pertinet; et non implicant divisionem beneficii. Non sunt gravosas, quia, quamquam attingunt tertiam partem reditus, causa harum pensionum est legitima et justa, quia fundatur in necessitate et in proposito subveniendi indigentiis plurimorum parochorum, qui vere egerunt: minime ut alicui gratificetur, aut ob titulos illos, contra quos edita fuit Constitutio Benedictina. Nec potest postponari quod ipsi, sponte sua, semel atque iterum has pensiones exceptaverunt. Et ideo, adversus eos qui in mora sunt, post decretum acceptationem, et post solutionis syngrapham, vim propriam omnino exercent haec iuris principia: quod semel placuit, semper placere debet: "Sic convenisti mecum." Constituti in mora nullam excusationem habent, quasi de cepti novitate rei fuerint; nam antiquissimae sunt pensiones ipsae, omnibus notae, neque nuperrimis impositae collationibus. Unica in his rebus novitas est solum reductio ipsarum pensionum rite peracta ab anno 1867, ex quo taxae et gravamina civilia augeri coeperunt. Ex adductis ergo liquido patet nullam deficere conditionem, ut rite impositae dici queant pensiones in themate; nullumque perfugium oneratis adesse, quam easdem tempestate persolvere, omnem relinquendo moram.

EPISCOPI NEQUEUNT IMPONERE PENSIONES PAROECIIS. Cum

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redditus Beneficii, praeter honestam Rectoris vivendi rationem, sint convertendi in pios usus; ideo, quando superior pensionem imponit, determinat hosce pios usus, quibus adducendum est quod superest. Quando similiter Pontifex ob causam detrahit de fructibus beneficii, iam eosdem applicat in usus pios. Sed hoc, ordinarie loquendo, locum habet quoad beneficia simplicia: quoniam rector, cum cura animarum, vel Episcopus vel Parochus ipse sit, suos habet pauperes propriamque Ecclesiam, quibus debet superfluum. Hinc multa saecula, quin ageretur de imponendis oneribus aut pensionibus super Beneficia, curam animarum habentia. Et quando consuetudo contraria in-

[*Latin ed. p. 555*]

REG. 555. The first [decree] concerns pensions, which are imposed solely so that those who, weakened by age and hardships, are no longer able to fully bear the burdens of the sacred ministry, may have from whence to live, and this is a true benefit. Regarding this matter, pensions have been granted to benefices, with just cause and with the consent of the Roman Pontiff. An example of a pension imposed on a benefice with the care of souls is found in the Council of Chalcedon, part 2, article 10, at the end. Another example is provided by St. Gregory the Great, who orders that a pension be given to a bishop of Gaul, who is no longer able to fulfill his sacred duties due to infirmity. "Indeed, having made his request, he declares that he is no longer fit for this ministry, nor can he perform other duties, due to his infirmity; he requests that another be ordained in his place; and after a solemn election by all, another bishop who is worthy shall be ordained, so that, as long as the aforementioned bishop lives in this world, the expenses due to him shall be provided from the same church." Furthermore, the Council of Trent, although perhaps altered by the changes of time, seemed to suggest the contrary, but with great difficulty admitted the imposition of pensions on benefices with the care of souls, provided that it concerned the reason for providing for the needs of a cathedral church and the dignity of the episcopate, indicating that several small revenues should be combined from certain benefices; but it excludes parish benefices, and some benefices, as long as they are not endowed. It also determines that poor parishes should be provided for, either through the union of small benefices, or through the imposition of tithes. Regarding parish churches, it seems to have been reluctant to impose pensions on them, because speaking of these, it says: "Parish churches, which do not exceed the sum of one hundred gold coins, according to their true annual value, shall not be burdened with any pensions or reservations of fruits." But this concession, although made with difficulty, has been put into practice so immoderately that the

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intervention of the Apostolic See has been necessary.

[*Latin ed. p. 556*]

In Italy, particularly among parish priests burdened with pensions, a situation had arisen whereby they were unable to adequately maintain their churches and attend to the divine worship and their own needs. These circumstances had reached such a point that the Roman Pontiff, Innocent XII, was compelled to intervene with a decree on November 11, 1692, by which he prohibited the burdening of parishes with pensions. This measure proved beneficial for a time, while Innocent XII was in power; however, afterward, it fell into disuse, being regarded as a temporary provision, and parishes once again began to be burdened with pensions. Then, in order to provide a remedy for these new evils, Pope Benedict XIII issued the Constitution *Quanta pastoribus* on September 6, 1724, in which, laying down the divine obligation incumbent upon pastors with regard to the poor, he stated: "<Among other things which are commanded to pastors by divine precept, as the Council of Trent rightly reminds us, it is recognized that they must personally care for the poor and other miserable persons; that is to say, they must provide for those who suffer from poverty, especially for widows, orphans, and the infirm, not only by fulfilling the spiritual duties of piety and charity, but also, like a good father of a family, they must assist them according to their ability, and they must not fail to provide them with whatever temporal assistance they can.> " Then, the Supreme Pontiff lamented that parish priests, burdened with pensions, had been forced to neglect the duties divinely imposed upon them, both with regard to the poor and with regard to the decorum of divine worship. And, praising the decree of Innocent XII, he inserted it verbatim into his own Constitution, confirming it in its full force, and renewing it, reserving to himself and his successors in the Roman Pontificate the authority to impose pensions on parishes: "It is permitted to allow the revenues of benefices, and the condition of places and persons, to be applied, solely for the benefit and advantage of the upkeep of those churches." Therefore, by means of this Constitution, all power to burden parishes is...

[*Latin ed. p. 557*]

REG. 85;7. The pensions granted by the Council of Trent are abolished by Him who stands above all law, that is, by the Pope, who, in chapter 4, concerning benefices, demonstrates the height of his authority with these words: "for we can, according to the fullness of power, dispense above the law." Since, from the aforementioned Constitution, it is certain that only the Pope can legitimately demand the imposition of pensions on parochial benefices, it follows that every pension imposed on parishes by Ordinaries is of no value, unless the authority to do so has been previously requested from the Holy See. It is not fitting to say that the beneficiary himself, spon-

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taneously, has accepted the burden of the pension; for the ignorance of the beneficiary regarding the existence of the aforementioned Benedictine Constitution cannot add value to a pension that is null at its root; rather, that consent, requested and granted with regard to the pension, could constitute a simoniacal pact. Furthermore, it can be gathered that the pensions in question were imposed by Bishops without the authority of the Apostolic See, either because no document is required in the episcopal curia, or because it has been observed that, even if these pensions were regularly imposed, with the authorization of the Roman Pontiff, they could nevertheless be of no value to others, since the cause, manner, and measure in their imposition would be lacking. The cause, according to De Luca, De pens. disp. 40, n. 4, "must be justified from elsewhere by external proofs, and in this matter, the assertion of the Ordinary himself is not to be accepted, according to a general proposition, as is stated in the Rotunda, decree 224, that what is forbidden to do is also forbidden to confess, or to assert." The manner of imposition raises suspicion that the pension was not legitimately imposed; for while the pension was being imposed, nothing else was made clear to the burdened party, except that this pension had to be presented to the episcopal curia, as if to a dispenser; nor were the persons made clear, in whose favor it was being given. This manner renders the pension of that kind invalid, and it is probable that it could be a case of concealed simony. The measure in imposing pensions cannot be neglected; for it is certain that a pension imposed cannot exceed one-third.

[*Latin ed. p. 558*]

58. To the Most Reverend Regent, concerning the portion of income, free from burdens: according to the Constitution of Pope Innocent XII, so that the beneficiary may be able to live competently: "Let the benefit be such an income, that it suffices, for a suitable sustenance of life, after deducting the burdens." But this measure is difficult to maintain in practice, especially in our times; when the income of benefices is constantly diminished by taxes levied by the civil government, and the total amount of such income can vary each year. Considering these circumstances on both sides, the purpose was to clarify the following question: Whether and how episcopal decrees, which impose annual pensions for life, on those who are burdened, concerning benefices, should be confirmed or revoked.

RESOLUTION. The Sacred Congregation of Bishops and Regular Canons, after deliberation on March 15, 1889, decided to respond as follows: Affirmative to the first part, negative to the second, and furthermore.

FROM WHICH IT IS UNDERSTOOD:

I. It is most fitting that the Bishop, by his ordinary right, can impose a

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pension for life on the holder of a benefice; provided that, in the concurrent cause, the consent of the holder, the income of the benefice, if it is a parish benefice, exceeds the sum of one hundred guilders, as stated in Trid. Sess. 24, cap. 13, p., and that the pension does not exceed one-third of the fruits.

II. It is permissible for Bishops to impose pensions on benefices within their Diocese, for the lifetime of the holder of the benefice, because the pension is imposed on the person, and not on the benefice itself; and the benefices are not thereby diminished, since the person, and not the benefice, is burdened with this obligation, which does not bind the successor in the benefice.

III. Those burdened with such a pension, with the aforementioned requirements fulfilled, are entirely obligated to fulfill the obligation which they freely undertook – and this, even according to the principles of law – since what has once pleased should always please. – etc.

[*Latin ed. p. 559*]

559. REGIE N. I. V. O. Indeed, burdens and obligations duly imposed and freely accepted, cannot be cast aside or avoided by pretexts, which are often not due to a doubtful knowledge of the obligation itself, but to a changed economic condition arising either from the perversity of others or from one's own inexperience in managing affairs. Pensions, in all cases, must be paid in full, without pretexts, because they are supported by the law and because they have been imposed by legitimate authority.

*3}|JN~ EX 3. CONGREG. INDULGENTIARUM. Most Blessed Father, the priest Ludovicus Descamps, S.J., from the province of Lyons, humbly prostrates himself before Your Holiness, and implores Your Holiness to deign to grant some Indulgence to all Christian faithful, of both sexes, who devoutly recite the following prayer excerpted from Your Holiness' Encyclicals, which begin: "At the end of the year, on December 25th, 1888." And so forth.

Prayer.

Authentic Version.

"You see, O Lord, how storms arise from every side, how the sea is troubled, and high waves are raised. Command, we beseech You, who alone can, both the winds and the sea. Restore to the human race the true peace, which the world cannot give, the tranquility of order. Let men, through Your grace and Your impulse, return to the due order, restoring in their hearts piety towards God, the..."

[*Latin ed. p. 560*]

From the decrees concerning indulgences, [we seek] piety towards God, justice and charity towards our neighbor, temperance in ourselves, and the subjection of reason to desires. May Your kingdom come, and may those very ones who, far from You, vainly toil in the search for truth and salvation,

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understand that it is essential that they submit to You and serve You. Justice and a paternal gentleness are inherent in Your laws; and You Yourself, through Your grace, spontaneously grant us the strength to observe them. Life on earth is a military service; but You Yourself are the spectator of the battle, You help man to conquer, You refresh the weary, and You crown the victor.

His Most Holy Lordship, Pope Leo XIII, in an audience held on January 19, 1889, by the undersigned Secretary of the Sacred Congregation for Indulgences and Sacred Relics, benignly granted an indulgence of two hundred days, to be gained once a day by all Christians of both sexes, who, with at least a contrite heart, devoutly recite the aforementioned prayer. This [indulgence] is valid forever, without any brief [papal bull]. Given from the Secretariat of the same Sacred Congregation on January 19, 1889.

SERAPHINUS, Cardinal VANNUTELLI, Bishop Prefect.

ALEXANDER,

OENSIS, Secretary.

[*Latin ed. p. 561*]

561 FROM THE HOLY CONGREGATION OF THE INDEX, DECREE, Saturday, April 13, 1889. The Holy Congregation of Eminent and Reverend Cardinals of the Holy Roman Church, by order of the MOST HOLY LORD OUR POPE LEO XIII and the Holy Apostolic See, which is entrusted with the Index of books of pernicious doctrine, and with their condemnation, prohibition, expurgation, and permission throughout the Christian Republic, having met in the Apostolic Palace at the Vatican on April 13, 1889, condemned and condemns, prohibits and forbids, or orders that the following pamphlet be referred to the Index of Prohibited Books: "Homo e l'Italia e la realtà delle cose, pensieri di un Prelato Italiano." Pamphlet extracted from the "Rassegna Nazionale," year X I, volume XLVI, March 1, 1889. Florence, etc. Therefore, no one of any rank or condition whatsoever may dare to publish or, having published, read or retain the aforementioned work in any place, and in any language, but rather he shall be obliged to deliver it to the Ordinary of the place or to Inquisitors of heretical depravity, under the penalties indicated in the Index of Prohibited Books. These matters, having been reported to the MOST HOLY LORD OUR POPE LEO XIII by me, the undersigned, S. I. G. from the Secret Archives, His Holiness approved the Decree and ordered it to be promulgated. In witness whereof, etc. Given in Rome on April 13, 1889. PLACIDUS MARIA Cardinal SCHIAFFINO, Prefect. FATHER HIERONYMUS PIUS SACCHERI, Order of Preachers, S. Iud. Congregation, from the Secret Archives. In the place of the Seal. On April 16, 1889, I testify that the aforementioned Decree was affixed and published in the City, I, the undersigned, Vincentius Benaglia, Magister

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Cursorum, Volume XXI, page 36.

[*Latin ed. p. 562*]

862 APPENDIX IV. In which are recounted more of the Decrees of the Holy Congregation of Rites. NÎMES. The parish church of the Cathedral of Nîmes in France, which previously was distinct from the Cathedral itself and entirely separate, is now under the jurisdiction of the Chapter of that same Cathedral. The ancient parish church, under the title of Saint Castor, Bishop and Confessor, had long been occupied by the "Pseudo-reformers," and the parish was transferred to the Cathedral church. The title of the Cathedral church is the Assumption of the Blessed Virgin Mary, who is the patroness of the entire city and of the entire Diocese of Nîmes. The title of the ancient parish church, now transferred to the Cathedral, is Saint Castor, Bishop and Confessor. Since the title is nothing other than that which each church receives at its consecration, it is clearly evident that the title of this church is the Assumption of the Blessed Virgin Mary. A doubt has arisen in some minds as to whether the Bishop of Nîmes and the Vicars General, who may belong only by title of honor to the Chapter, are obliged to celebrate the feast of Saint Castor, Bishop and Confessor, and by what rite. Therefore, the following questions were put: I. Whether the Bishop of Nîmes and Alais, and his Vicars General, as well as the Chapter and the Cathedral church, are obliged to celebrate the feast of Saint Castor, Bishop and Confessor? II. And, if so, by what rite are they obliged to celebrate it? Therefore, the Holy Congregation of Rites, having considered a written opinion from one of the Masters of the Ceremonies of the Apostolic See, decided to declare the following, as reported by the undersigned Secretary: To I. Negatively. To II. As provided in the first question. And thus it declared and decreed. March 31, 1879. SAINT JAMES OF CHILE. The Reverend Father Francis Martínez, Canon and Secretary of the Chapter of the Metropolitan Church of Saint James of Chile, presented the following to the Holy Congregation of Rites: In the Metropolitan Church of Saint James of Chile, according to ancient custom, Vespers are sung on Saturdays of Lent and on other days, less solemnly than on the major feasts; and in those Vespers, the weekly Canon recites the Office immediately after Mass, from his seat and from the choral stall; then he receives the stole, which also...

[*Latin ed. p. 563*]

563. These [customs] were adopted, and indeed praised, but also supported by him [St. Alphonsus] before the aforementioned Sacred Congregation. Therefore, after mature deliberation on all matters, especially concerning the observance of the asserted ancient custom, and after due consultation with His Eminence, the following were established to be observed by all in the aforementioned Basilica:

1. Those who wear a skullcap shall always remove it in the choir when

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approaching or departing from the altar, when kneeling, when making confession, or when being incensed; but during the Divine Office, when singing psalms or antiphons with the choir, when in the middle of the choir reading or singing the invitatory, the readings, the responses, the martyrology, etc., and finally during the Mass when the chaplains sprinkle with holy water, place and bless the incense, leaving the choir, proceed to the altar, incense it, go to the lectern in the middle of the choir, where they are incensed, and standing while the antiphona to the Magnificat is repeated, recite the prayers and conclude the Office, in which all greetings are omitted. Hence, he humbly inquired whether this custom could be lawfully maintained by the Chapter of the aforementioned Metropolitan Church, or whether, rather, this Vespers Office should be performed according to the norms of the *Caeremonialis Episcoporum*, Book II, Chapter 3?

The Sacred Congregation of Rites, having heard the opinion of another of the Masters of the Apostolic Ceremonies, and in response to the question submitted by the undersigned Secretary, replied as follows: Negatively to the first part; affirmatively to the second. And so it replied.

March 31, 1879.

ROME.

To the Most Reverend and Reverend Monsignore, Lord, and Clergy of the Illustrious Basilica of Saint Mary across the Tiber, so that any doubt regarding the understanding of the provisional decree of March 16, 1876, may be removed, the Sacred Congregation has decided that the particular customs of its Basilica, which pertain to the sacred ceremonies and functions, shall be submitted for examination.

His Eminence, after the title of the Basilica was read, and after the following were said: "Gloria," "Credo," "Sanctus," "Agnus Dei," while the Gospel is being sung, they receive or give the Pax; while the Most Holy Sacrament is elevated, administered, or carried; at the blessing at the end of Mass.

2. The Lector, who recites or sings the readings in the middle of the choir, shall ask for a blessing by deeply inclining his head towards the hebdomadarium, read distinctly and devoutly, and at the end of each reading, if he is not a Canon, he shall kneel at the words "Tu autem, Domine."

3. On Sundays, the Canon celebrating, wearing a cope, for the asper-

[*Latin ed. p. 564*]

564 APPENDIX IV. After having received the sprinkling of blessed water, omitting the imposition of incense in the thurible, he shall proceed with the master of ceremonies, deacon, and subdeacon preceding him. However, if the celebrant is a Canon, but a beneficiary or from a lower order of the clergy, the duties of the Canon's ministers shall not be performed at all. 4. During the weekly sprinkling of blessed water, all must stand with their

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heads uncovered; meanwhile, the deacon and subdeacon shall stand at the lowest step of the altar. After the sprinkling has been completed, the Canon weekly shall take the vessel in the same place, but not from the altar, but placed upon the stall. 5. After the celebrant and ministers have made their confession, all shall sit in the choir, nor shall they rise except when the celebrant, having made the sign of the cross, reads the Introit of the Mass, and at the appropriate time, they shall alternately say "Kyrie eleison." Likewise, all shall sit; when incense is offered before the oblations, and the celebrant himself offers incense, the choir shall rise for the incensation of the choir; if this takes place, otherwise they shall remain seated until the Preface. 6. On the solemn days of the Annunciation of the Blessed Virgin Mary and the Nativity of the Lord, at the words "Et incarnatus est," and in the chanting of the Passion during the Greater Week, at the words "emisit spiritum," the Canons, the celebrant, and the ministers, if they are able, shall use a censer. But those who chant the Passion shall use a book placed upon the ambo, with their faces turned towards the altar, as has hitherto been observed. 7. The deacon and subdeacon, respectively after the Epistle and before the Gospel, if they are Canons, shall incline their heads, while the others, with their knees bent, shall receive the blessing from the celebrant. Likewise, at the end of the Mass, the Canons shall stand, inclining themselves deeply, while the others shall all kneel. 8. In the solemn exposition of the Most Holy Sacrament, in place of the deacon, another minister wearing a cope may place the Sacrament upon the throne, and after the blessing, deposit it in the Tabernacle. 9. On Holy Saturday, the subdeacon who is to chant the Epistle, and not another, shall carry the cross, both for the blessing of the new fire, and of the Paschal candle. After the blessing of the font, the clergy, going out through the smaller door, shall enter through the larger door, and shall perform the Litanies. 10. On the feast of Saint Mark, and on the feria of the Rogation days, the Mass of the day shall not be celebrated before, but after the procession. On the feast of the Saints whose churches are filial, the Mass of the feast in the basilica shall be omitted, and shall be sung by the choir in the filial church. However, it is a praiseworthy custom that on the principal feasts of the Virgin Mary, a Mass of the feast of the Blessed Virgin Mary, with singing, shall be celebrated by the chaplains in the chapel of the Blessed Virgin Mary, Clementia, although afterwards a Mass of the same solemnity shall be sung by the Reverend Canons. 11. If, on account of the occurrence of Do-

[*Latin ed. p. 565*]

565, adorned with emblems, which are presented as revealed to the pious Blessed Margaret Mary Alacoque; the other expresses the Immaculate Heart of the Blessed Virgin Mary, adorned with a rose crown and pierced by a sword; both are sometimes encircled by rays of its own glory, as they say. Therefore, the Sacred Congregation of Rites, having heard the opinion

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of the Reverend and Eminent Assessor of the same Congregation, reported by the undersigned Secretary, judged that the following response should be given to this question: Such emblems may be permitted for private devotion, provided they are not affixed to altars. And thus it responded and wrote. April 5, 1879. APPENDIX IV. Whether the privileged offices, or the office of a higher feast of the Blessed Virgin, "of Mercy, or of the Way of the Cross," should be transferred, in which the choir is accustomed to assemble in the same chapel, such a gathering will be held on the day on which the office of the feast is transferred according to the rubrics. 12. Since, according to ancient custom, on the fifth day of the week after the second Sunday of Lent, on the occasion of the Station in the aforementioned Basilica, the solemn Compline is customarily chanted before the Most Holy Sacrament, with the Forty Hours of Prayer exposed, this custom, being truly praiseworthy, should be preserved in the future, notwithstanding the Clementine Instruction. In all other matters, the Ceremonial of Bishops and the Rubrics should be observed inviolably. Rome, April 4, 1879. To the Reverend and Eminent Lord Cardinal Lawrence Nina, titular of the Basilica of Saint Mary Across the Tiber. MARIANOPOLITANA. The Reverend Charles Lecoq, Priest, Professor of Sacred Theology at the Marianopolitan Seminary, humbly requested a solution to the following question from the Sacred Congregation of Rites: Whether it is permissible or tolerable to have an image, widely disseminated, of two hearts of the same size, of the same beauty, and placed in the same manner, one of which represents the Adorable Heart of the Word of VANCOUVER. To the Reverend Bishop of Vancouver, for a suitable resolution, regarding the following question: Are all the clergy of the entire Diocese of Vancouver obliged to perform the Office of Saint Andrew, the titular of the Cathedral Church, and must they perform it according to the double rite of the first class with the octave, as prescribed by the Ordinary; if indeed, in that region, there is no canonically elected Patron, but Saint Joseph, the Spouse of the Virgin Mary, is venerated as the primary Patron, and Saint Francis Xavier as the secondary Patron, for the entire ecclesiastical province. The Sacred Congregation of Rites, in response to the report of the undersigned Secretary, re-

[*Latin ed. p. 566*]

§66 APPENDIX: Responds: Affirmative, and the Decrees of Rossano are to be observed. August 22, 1772, to V, Ravenna. May 9, 1857, to 2, and Nottingham. March 17, 1889. And thus he responded and ordered it to be observed. On May 9, 1879. OF THE MINOR ORDER OF ST. FRANCIS OF THE CONVENTUALS. The present Superiors of the Convent of St. Anthony of Padua of the Minor Order of St. Francis of the Conventuals in Brussels, stated that many faithful, especially the poor, who have no means to pay, celebrate the funeral Mass in the parish church, and in so doing, they perform only the funeral rites without the Mass; afterwards,

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so that the soul of the deceased may not be deprived of the comfort of the most august Sacrifice of the Mass, they celebrate a Mass for the repose of the soul in another church, especially among the Regulars. However, since the aforementioned Mass for the repose of the soul, celebrated in another church, seems to take the place of the funeral Mass, the celebration of which is the sole right of the parish priest, although in truth it is only the Mass on the third, seventh, or thirtieth day after the burial, or a votive Mass, it is doubted whether such a Mass may be celebrated in another church. Therefore, the following questions were humbly submitted to the Sacred Congregation of Rites, namely: IV. Question I. Is it permissible to sing a Mass for the repose of the soul in another church and among the Regulars, which the faithful request to be celebrated for their deceased parents or friends, after the funeral rites have been performed in the parish church, even if the funeral Mass is not celebrated in the parish church? Question II. In the case of the aforementioned Mass, may the parents and friends be summoned or invited by letter, as is customary in performing funerals? Question III. Is it permissible to sing a Mass on a feast day or on a weekday in another church for the deceased, even if a funeral Mass is not celebrated for the same person in the parish church? Therefore, the Sacred Congregation, having heard the written opinion of another of the Masters of the Ceremonies of the Apostolic See, and after considering the report of the undersigned Secretary, and after the aforementioned questions were proposed, decided to respond as follows: To I, Affirmative, provided that the rules of the rubrics are observed. To II, Nothing prevents it. To III, It is permissible. And thus it responded. On May 13, 1879. OF THE ORDER OF ST. AUGUSTINE OF THE EREMITICAL CANONS. The aforementioned Canons requested the approval of a certain scapular exhibiting the colors and images of the four scapulars collectively, namely the Most Precious Scapular of San-

[*Latin ed. p. 567*]

To the Most Holy Lord God, to the Immaculate Conception, to Mount Carmel, and to the Seven Sorrows of the Blessed Virgin Mary; the Sacred Congregation has responded: Negatively. On June 14, 1879. QUESTIONS. 1. Whether the Mass of Saint Francis of Borgia should be corrected according to the Bull of Canonization, which assigns the Mass "Os iusti" with the Gospel from the Common of Abbots, and the proper first prayer, even though in all editions of the Roman Missal, even after the last correction made by the Sacred Congregation, the complete Mass "Os iusti" from the Common of Abbots is found, except for the first prayer? The response was: Nothing should be changed. 2. Whether the collect at the end of Mass IV, 3, for every degree of the Church, with the same wording as that which is read in the Mass of Holy Friday, should be corrected by writing "Spiritus" with "s" and in the conclusion without the pronoun of the same? The response

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was: Negatively. On June 14, 1879. FROM THE APOSTOLIC PREFECTURE OF MADAGASCAR. The Sacred Congregation for the Propagation of the Faith transmitted to this Sacred Congregation of Rites the following questions, proposed by the Most Reverend Apostolic Prefect of Madagascar for proper resolution, namely: Question I. Whether vernacular hymns are tolerated in Masses, which are celebrated with singing, always preserving the custom of singing the Introit, Gloria, Creed, Sanctus, and Agnus Dei. Question II. Whether the use of interrupting the solemn ceremonies of baptism of adults, in order to explain these ceremonies in the vernacular language, is permitted? The same Sacred Congregation of Rites, after hearing the report of the undersigned Secretary, and also the opinion of another from the Masters of Apostolic Ceremonies, considered it appropriate to respond to these questions as follows: Regarding I. Vernacular hymns in liturgical functions and offices are not to be tolerated, but are entirely prohibited outside of liturgical functions; the custom should be preserved. Regarding II. Negatively. And thus it responded and ordered that it be observed. On June 21, 1879. POLYCASTRO. The Most Reverend Joseph Maria Gione, Bishop of Policastro, while conducting a pastoral visitation in the churches of his diocese, found some altars in which certain cracks are visible; still doubting whether these have lost their consecration, he humbly requested a declaration from the Sacred Congregation of Rites regarding the following questions, namely: I. Whether an altar that is fixed, whose stone table...

[*Latin ed. p. 568*]

868 APPENDIX IV. Whether it should be divided into two nearly equal parts, but in such a way that such a division most affects the tomb of the relics, and whether both parts should be separated from the upper steps of the altar itself or from the supporting pillars? II. Whether it should be considered that a portable altar has lost its consecration because the stone of the tomb of the relics has some fissures, which, however, are so closely joined together that there can be no doubt about the authenticity of the relics. And the same Sacred Congregation, having heard the opinion of another from the Masters of the Apostolic Ceremonies regarding the aforementioned report of the undersigned Secretary, responded affirmatively to both questions, and thus responded and declared. On June 23, 1879. LAUDEN. Although the Cathedral Church of Lodi is demonstrably, from irrefutable monuments, to have been properly consecrated in the year 1840, nevertheless, not one of the twelve prescribed crosses appears on its walls in the presence of the people. Hence, wishing to remedy this defect, the Most Reverend Dominic Maria Gelmini, the present Bishop of the Church of Lodi, inquired of the Holy Congregation of Rites what should be done in this case? And the same Sacred Congregation, having heard the opinion of another from the Masters of the Apostolic Ceremonies, and after

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deliberation, decided as follows, according to the report of the undersigned Secretary: The crosses should be painted or sculpted again, omitting the ceremony of anointing. And thus it was decided. On June 28, 1879. ANTWERP AND SCODREN. The Reverend Joseph Sacchi, Priest of the Archdiocese of Antwerp and Scodren, humbly presented the following questions to the Sacred Congregation of Rites: Question I. In the Roman Ritual, under the title "Ordo administrandi Sacram Communionem" (Order for administering Holy Communion), it is stated: "Priests, however, should communicate wearing a stole." The question is, what color should this stole be? Question II. Whether Deacons, when privately approaching to receive Holy Communion, should wear a stole crossed over their cottas? The same Sacred Congregation, after a careful vote, and with the written opinion of another from the Masters of the Apostolic Ceremonies, decided as follows, according to the report of the undersigned Secretary: Regarding I. The priest communicating should use a stole of the same color as the priest who administers. Regarding II. Affirmative. And thus it was declared and responded. On July 1, 1879. CONGREGATION OF THE ORATORY, Prefect of the Sacred Ceremonies of the Church.

[*Latin ed. p. 569*]

APPENDIX IV. The Congregation of Sacred Rites in the City of Venice humbly submitted the following questions for consideration:

Question I. Whether, in the funeral rites for a Bishop, Archbishop, Patriarch, or even a Cardinal, whether with the body present or absent, or in the funeral rites for the Supreme Pontiff when the body is absent, a black baldachin should be placed over the deceased or over the catafalque? And, to the extent that the answer is negative, according to the response of July 8, 1631, in Florentina, what about the contrary custom?

Question II. Whether the name of the Bishop should be mentioned in the Canon of the Mass, as in other liturgical prayers, from the day of the announcement, even if this is not officially considered, of his election in the Consistory, or from the day he takes possession of the Church to which he was appointed by the Supreme Pontiff?

Therefore, the Sacred Congregation of Rites, having heard the opinion of another of the Masters of the Sacred Ceremonies, declared the following to be the decision, as recorded by the undersigned Secretary:

Regarding I. The custom mentioned should be eliminated as an abuse.

Regarding II. From the day the Bishop takes possession, either by the Bishop himself or by his Procurator.

And thus it was declared and recorded.

June 4, 1879.

VICARIATE APOSTOLIC OF BOMBAY.

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To the Sacred Congregation for the Propagation of the Faith, the following question from the Most Reverend Vicar Apostolic of Bombay was transmitted for appropriate resolution:

In India, especially among the Goans, it is customary for the faithful to offer water to the priest celebrating Mass after the ablutions and before the Communion, which water is then taken home and given to the sick, believing that it possesses some healing power. Some priests approve of this practice as ancient and pious, while others consider it vain, foreign to the common custom of the Church, and an unlawful interruption of the Mass. The question is whether it is permissible to maintain this practice.

The same Sacred Congregation of Rites, with the reference of the undersigned Secretary, having heard the opinion of another of the Masters of the Sacred Ceremonies, and of the Reverend Assessor of the Sacred Congregation itself, decided that a response should be given:

It is not permitted within the Mass.

And thus it was recorded.

July 4, 1879.

IADREN.

Reverend Father Anthony Sucic, Canon of the Illustrious Collegiate Church of Pagensis in the Archdiocese of Iadren, humbly inquired of the Sacred Congregation of Rites:

Whether, in the Prayer "A Cunctis," the name of Saint Joseph should be...

[*Latin ed. p. 570*]

570 APPENDIX IV. Regarding the Mother of God's Spouse and the Patron of the Cattolica Church, it may be added in this manner, whether with the blessed Joseph, his spouse, or whether it must be added entirely by the word alone, with the blessed Joseph? The same Holy Congregation, in response to the request of the undersigned Secretary of the Holy Congregation of Rites, replied: Negatively to the first part; Affirmatively to the second, and a Decree was issued in Ratisbon, on April 22, 1871, at II. And thus it responded and ordered that it be observed. August 18, 1879. SEGUSIEN. By virtue of the Apostolic Brief of September 6, 1853, for the Kingdom of Sardinia, the precept of hearing the Holy Mass and abstaining from servile work was imposed on certain feast days, among which is mentioned the Annunciation of the B.V.M., with the obligation added of performing the sacred functions as before. In the year 1869, on the Friday of Holy Week and on the feast of the Annunciation, falling on the same day, the extended Calendar of the Diocese of Segusien, perceiving that a very grievous wound would be inflicted upon the solemnity of that same Friday by permitting the celebration of private Masses on the same day, which the people are no longer obliged to attend, transferred the Office of the Annunciation, with the precept of performing the functions as before,

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and the Masses to be repeated by the Parish Priests for the people, to the second day after the Sunday in Albis; in some other subalpine dioceses, it was done differently. Thus, in the year 1875, the compilers of the Calendar of the Province of Turin, some indicated the suppressed feast with a small cross on March 25, the Friday of Holy Week, while others transferred the feast, placing the cross before the second day after the Sunday in Albis. When the same occurrence presented itself again in the following year, 1880, namely, the feast of the Annunciation and the Friday of Holy Week, so that in a matter of such importance, the way might not be left open to free private opinions, the Most Reverend Edward Joseph Rosaz, Bishop of Segusien, deemed it his duty to approach the Holy Congregation of Rites and humbly request a resolution of the following doubts: I. If, on the Friday of Holy Week, March 25, the feast of the Annunciation of the B.V.M. is celebrated on the same day as before, when it was a matter of precept? II. Whether, therefore, private Masses are permitted in the Parishes for the convenience of the faithful? III. And, if negatively in this second case, whether the Parish Priest is obliged to celebrate and apply a private Mass for the people in the Cathedral, when the Bishop is celebrating the Chrism Mass and the solemn Mass for the diocesans on account of the feast? IV. Whether the aforementioned feast of the Annunciation, with regard to the sacred functions...

[*Latin ed. p. 571*]

APPENDIX: Concerning the transfer of the application of the Mass for the people, etc., as is the Office transferred on the feria II after Sunday in Albis? The Sacred Congregation of Rites, through its undersigned Secretary, having maturely considered the matter, has responded as follows: To I. Affirmative. To II. Negative; and the Decree shall be given in Viglaven. on September 26, 1868. To III. The parish priest celebrating a single Conventual Mass on a day must apply it for the people; otherwise, for the first sacred celebration; and the Decree shall be given in Lingonen. on December 5, 1868. To IV. Negative in all respects. And thus it has been written, declared, and commanded to be observed. On August 18, 1879. LUCANA. The Most Reverend D. Nicolaus Ghilardi, the present Archbishop of Lucana, during his visitation of his diocese, found in a certain parish church two fixed altars with complete tops made of stone, which, it is asserted, were originally consecrated as fixed in another church, and were then transferred to the church in which they are now found, and in which Mass has always been celebrated from ancient times. It should be noted that said church was consecrated in the year 1866 by the aforementioned prelate, and in this consecration, the altars remained in the state in which they are now found. Therefore, the Archbishop humbly inquired of the Sacred Congregation of Rites: Are these altars to be considered consecrated, given the Decree of the Sacred Congregation of Rites of May 18, 1819, in Senogallien? Furthermore,

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the same Archbishop found certain portable altars, concerning which, although it cannot be prudently presumed that a tomb of relics was ever opened at any time, a certain crack is visible between the tomb itself and its lid, and it is observed that this crack can be moved by hand, due to a lack of cohesion, whereby it is found that the cement did not sufficiently penetrate the crack from the beginning, or was consumed afterwards. Hence, he also inquired whether such altars should be considered consecrated. The Sacred Congregation of Rites, through its Secretary, having heard the opinion of another, from the Masters of the Apostolic Ceremonies, considered it appropriate to respond as follows: To I. Affirmative, according to other decrees. To II. Negative, and in the opinion of: it is the opinion that the Archbishop should privately make a new mortar of cement, previously blessed according to the Pontifical, in such a way that the crack, which is visible in the portable altars, between the tomb of relics and its lid, is sealed.

[*Latin ed. p. 572*]

§72 APPENDIX IV. Let the covering be completed and the very lid be secured. And thus he responded, declared, and wrote. On September 3, 1879, in BAYONE. The Reverend John Anthony Solefranque, Canon and Master of Ceremonies of the Cathedral Church of Bayonne, with the consent of his Most Reverend Bishop, presented the following to the Sacred Congregation of Rites, and humbly requested a suitable resolution, namely: In approximately the year 1847, the Bishop of Bayonne granted, for the devotion of certain faithful, the exposition of the Most Holy Sacrament on the sixth day of each week of the month, in honor of the Sacred Heart of Jesus. Until the year 1858, according to the custom of the churches of Galliae, Masses were celebrated and Communion was distributed at the altar where the Most Holy Sacrament was exposed. This custom was suppressed in the year 1858 as an abuse condemned by the decrees of the Sacred Congregation of Rites, when the Roman Rite was adopted for the Breviary and Missal in the Diocese; and for the past eighteen years, Masses have not been celebrated, nor has Communion been given at the altar where the exposition took place. This laudable custom was also superseded by a decree of the Parish Priest of the Cathedral Church in the year 1873. Grieved by this, the diocesan liturgical commission recalled the decrees to memory, and decided that on the days when the Most Holy Sacrament was exposed for the adoration of the faithful, Mass should not be celebrated at the altar of exposition. The Holy Pyx should be placed on the altar nearest the tabernacle, and Communion should be given there. The Parish Priest opposed this decision, and ordered his Vicar to return the sacred pyx to the altar where the Most Holy Sacrament was exposed, and to celebrate Mass and distribute Communion there. This gave rise to a dispute: the Parish Priest claimed that the custody of the Most Holy Sacrament belonged to him, and that the Master of Ceremonies had no authority in the Cathedral except in purely

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ceremonial and capitular functions. Therefore, the following questions are raised: 1. Did the Master of Ceremonies, acting according to the decision of the liturgical commission, which was presided over by the Vicar General, and ordering the celebration of Mass and the distribution of Communion outside the altar where the Most Holy Sacrament was exposed, exceed his authority and usurp the rights of the Parish Priest? 2. Does the custody and care of the veneration of the Most Holy Sacrament in the Cathedral Church legally belong to the Parish Priest or to the Chapter? 3. Did the Parish Priest act wrongly and violate the legitimate authority and rules of the Church by resisting the mandates and orders of the Master of Ceremonies, and by celebrating Mass at the altar of exposition and distributing Communion there? 4. Whether in the Cathedral Church...

[*Latin ed. p. 573*]

573 IX i v. Ii, which is also the Parish Church, to which do the functions of divine worship, such as Exposition and Benediction of the Most Holy Sacrament, pertain: to the Chapter or to the Parish Priest? 5. Does the Master of Ceremonies of the Cathedral have the right and the obligation to ensure that the rules of liturgy are observed, even outside the Choir, in funerals, and in the administration of Baptism and Marriage, and in all parochial functions? 6. Can the offices of which we are speaking in the Ceremonial of Benedict XIII be performed with singing, according to the common practice in smaller churches? And to the extent that the answer is affirmative; 7. In a Mass sung by the celebrant without sacred ministers, can the Passion of the Lord be read up to the "Munda cor," and the part that follows "Munda cor" be sung; or can the entire Passion be sung in the tone of the Gospel; or can even two parts, namely, the narration and the "synagogue," be sung by lay people, and the words of Jesus Christ be recited by the celebrant, as was formerly customary in many places in our France? Furthermore, the Sacred Congregation of Rites, after a careful examination of a written request from one of the Masters of Ceremonies, and after duly considering the report of the undersigned Secretary, has decided as follows: To I. Negatively, or rather, the Master of Ceremonies acted appropriately in this case. To II. Although the care and custody of the Most Holy Sacrament pertain to the Parish Priest according to the custom of churches, nevertheless the Chapter must ensure that the sacred rites are properly performed. To III. Affirmative. To IV. The functions in the Cathedral Church, which is also the Parish Church, pertain to the Chapter, except for the administration of the Sacraments. To V. Affirmative. To VI. and VII. Negatively. And thus it was decided, declared, and ordered to be observed. On September 13, 1879. CELSONEN. Vicarious General of the Episcopal See of Gelson, while that See is vacant, requested, with earnest supplication, that the Sacred Congregation of Rites resolve the following doubt: Since the Decree of the same Sacred Congregation of Rites, dated

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August 14, 1858, states that it is not permissible to postpone the Mass for the bride and groom and their blessing to the next day, or to a much later date, when the spouses, before receiving the blessing in the church, are living together in the same house; and considering the custom of this and other dioceses, which has existed since time immemorial, of celebrating the aforementioned Mass with the blessing afterwards, and that it has always been, and for some reason can never be, celebrated on the day of the wedding, is such a custom to be tolerated, or rather, is it to be prohibited? Furthermore, the Sacred Congregation of Rites, with the reference of the undersigned Secretary,

[*Latin ed. p. 574*]

574 APPENDIX IV. Rio, having heard the opinion of another of the Masters of the Sacred Rites, and also of the Reverend Assessor of the same Sacred Congregation, the matter was thus resolved: It was declared that an immemorial custom can be tolerated, provided that a reasonable cause intervenes, and that during the intervening time, the spouses do not live together. However, the Reverend Ordinary should suitably warn those about to be married, so that, if possible, they may contract the marriage in the Church. And thus it was resolved. On September 27, 1879. CONVENTUAL FRANCISCAN MINORS OF SAN FRANCISCO. Since the Brothers of the Order of the Conventual Franciscans are bound by the precept of the Rule and the Urban Constitutions to perform the Divine Office according to the order of the Holy Roman Church; the present Superiors of the Convent of Saint Anthony of Padua of the Conventual Franciscans in Brussels, humbly submitted the following questions to be examined by the Sacred Congregation of Rites: Question I. Do the Minor Brothers fulfill the precept of the Choir by reciting the Divine Office in a private chapel of the Convent, separate from the Church? If not, Question II. Do they fulfill the precept of the Choir by reciting the Divine Office in a private chapel of the Convent which is joined to the Church by a wall or entrance? Question III. Can the local Superior dispense, and at his discretion, for a certain number of months, the recitation of the Divine Office outside the Church, in the chapel of the Convent or the sacristy, due to a cause, such as excessive cold or heat? Furthermore, the Sacred Congregation of Rites, after a careful examination of the questions proposed, and after receiving a vote from another of the Masters of the Sacred Rites, and after considering the report of the undersigned Secretary, thus resolved: To 1. No. To 2. Yes, according to the following conditions: To the Reverend Bishop who, as Delegate of the Apostolic See, visits the place, and sees whether it is fitting, and whether it is in communion with the Church. To 3. As provided in the second. And thus it was resolved and decreed. On December 12, 1879. MEXICO. The Reverend Dom Pelagius Anthony Lavastidas y Davalos, Archbishop of Mexico, presented to the Sacred Congregation of Rites that in the

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Metropolitan Church of Mexico, for many years, the solemn anniversary of the Dedication of the same has been celebrated on August 31st, rather than that of its Consecration, which occurred in the year 1850; and therefore, he humbly requested the same Sacred Congregation:

[*Latin ed. p. 575*]

IV. I. Whether such a custom can be lawfully observed, or whether the Anniversary of the Consecration, falling on August 14th, should absolutely be celebrated? II. Whether both Anniversaries can be observed on the same day by assigning August 31st for this purpose? The Sacred Congregation of Rites, having heard the opinion of one of the Masters of the Sacred Ceremonies, in response to the following request from the undersigned Secretary, has approved the following: Only one Office should be performed; and regarding the date, provision should be made according to the Calendar approved by the same Sacred Congregation in the year 1873. And thus it has responded and ordered that it be observed. January 8, 1880. TARRACONEN. The Most Reverend D. Benedict Vilamiltaiana y Viia, Archbishop of Tarragona, humbly proposes the following questions to the Sacred Congregation of Rites:

Question I. In Urgell, on April 22, 1871, it was declared that the "Glory" and the "Creed" should not be recited alternately by the celebrant and the ministers, but that the entire text should be said by all, either preceding or following, but not simultaneously. The question is asked: 1. Whether, when the "Glory" and the "Creed" are recited before the Bishop, who is prepared to celebrate the solemn Mass, or when he is present wearing the cope, they should be recited as above, or alternately? 2. And again, if alternately, whether by the Bishop and the Canons all together; or whether by the Bishop, and two Canons standing close by, and by the other Canons two by two? 3. Whether, both in the circle and at the altar, the "Sanctus" and the "Agnus Dei" should also be recited alternately, or whether they should be said by all at the same time?

Question II. In Erien, on August 20, 1870, it was declared that the Bishop cannot celebrate a Pontifical Mass with only a Deacon and a Subdeacon, omitting all other ministers. The question is asked: Whether he can celebrate a solemn Mass with a Deacon and a Subdeacon, according to the priestly rite? Also, whether he can perform priestly functions in the priestly manner, at least some, e.g., to bless or consecrate a church, or whether he must abstain entirely?

The Sacred Congregation of Rites, considering the request of the undersigned Secretary of the Sacred Congregation of Rites, and the careful opinion of one of the Masters of the Sacred Ceremonies, has decided to declare as follows: Regarding I. With regard to the first part, the decree should be observed as above in Urgell. Regarding the second and third parts, provision should be made as in the first. Regarding II. In all respects,

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no.

And thus it has declared, and ordered that it be observed. January 7, 1880.

[*Latin ed. p. 576*]

576 APPENDIX IV. TALVEN. ET SULMONEN. Reverendissimus Dominus Tobias Patroni, Episcopus Vaivénensis et Sulmonensis, ut omnem anxietatem suam, quae exoritur ex conscientia, in recitatione Divini Officii removeret, instanter postulavit solutionem dubii a Sacra Congregatione Rituum, scilicet: "In Cathedrali Ecclesia Sancti Pamphili, in Sulmona, recitantur officia omnium Sanctorum, et officia Sanctorum Summorum Pontificum, quae non recitantur in Cathedrali Vaivén, neque in ecclesiis Dioecesis. Cum vero Episcopus, ut orator, habitualmente resideat in Sulmona, potestne se conformare Calendario Cathedralis Sulmonensis?" Et Sacra Rituum Congregatio, per Secretarium infra scriptum, respondit: "Episcopus utatur iure suo." Die 17 Ianuarii 1880.

[*Latin ed. p. 577*]

Letters from His Holiness Pope Leo XIII to the Bishop of Cremona.

LEO PP. XIII. Venerable Brother, greetings and the Apostolic Blessing. We have learned with pleasure that you have, as was fitting and proper, and without any doubt would do, submitted to the legitimate authority and to Our judgment, your recent work, offering it as a testament of due obedience and reverence. In this matter, a true example of virtue has certainly shone forth, particularly in the Bishop to be commended; and this is all the more significant because it has been freely published for the benefit of the people. The fame of Fenelon's modesty is not yet extinguished; and by this very fact, it is confirmed that it is far more glorious to acknowledge one's error in a matter than to err in something, however small.

Therefore, venerable brother, you have in the very awareness of this deed, the principal fruit of consolation; although the approval of wisely judging men should also appear pleasing and honorable to you. The will of these men will also easily remove that mental distress which you must have experienced from the clamor and applause of those who eagerly make use of your work in support of their cause.

Furthermore, you understand how important it is to carefully consider that the cause of the Roman pontificate should not be forced into a narrower field of debate. Indeed, in such a serious matter, one must not base judgment on the changeable course of events, but rather delve deeper into the reasons, and seriously consider what justice demands, and what is desired for the Holy See in the fulfillment of its divine mission.

For, as We have often said, and must say again, in the civil government, the freedom of apostolic offices and rights is at stake; and this freedom must not be subject to the power or arbitrary will of others. Therefore, Our

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predecessors have always striven to protect the integrity of their office with all diligence and effort, and We ourselves strive to defend it with equal perseverance, considering the extent of that protection. This judgment should guide opinion; and this very thing must be carefully instilled in the minds, especially since (1) In this volume, on page 520, We have presented other letters from the Most Holy Father to the Bishop of Brescia, in which He lamented the "Opusculo - Roma e Vitalia, e la realtà delle cose -" (The Booklet - Rome and Vitalia, and the reality of things). Now, We gladly bring these present Letters, sent by the Most Holy Father to the Bishop of Cremona, to light; in which, after declaring himself the author of that booklet, he retracted it, and, as it pleases us to believe, submitted himself sincerely to the condemnation of this booklet by the Sacred Congregation of the Index. Acts, Volume XXI, section CGI, 37.

[*Latin ed. p. 578*]

It is known to many that, among other praiseworthy things, your sentiments have grown in favor to a greater degree. – Meanwhile, we embrace you within the bosom of paternal charity, and we are certain that you will constantly respond to the mutual will of Our benevolence and the reciprocal exchange of offices. Receive, as a pledge of divine favor and as a testament of Our affection, the Apostolic Benediction, which we impart to you with paternal love. Given in Rome, at St. Peter's, under the Fisherman's Ring, on the 19th of April, in the twelfth year of Our Pontificate. LEO XIII, POPE. FROM THE HOLY CONGREGATION OF THE COUNCIL OF LEÓN. GRANT OF DISPENSATION FROM IRREGULARITY. Dated December 10, 1888. SUMMARY OF THE CASE. Aurelius Soto y Rosa, a member of the diocese of LeÃ³n and a student of its seminary, states that, "by the grace of divine mercy, he feels a vocation to the priesthood, and is already prepared for ecclesiastical studies, so that he may receive the sacred orders." However, it is alleged that he has a certain irregularity in his right arm and hand; and that this irregularity, although not grave, exists. He can, without visible irregularity, elevate the host and the chalice, divide them, and perform other similar actions; only the movement of the hand when making the sign of the cross, and when making the sign over himself and over the chalice, is somewhat irregular, since the hand does not appear straight, but is always inclined towards the left side, and the fingers have little strength. After explaining these matters, he approaches the Most Blessed feet and prays that the Most Blessed may deign to grant a dispensation from this defect.

[*Latin ed. p. 579*]

LEGIONEN. The Bishop states that all of these things are true. Furthermore, the master of ceremonies, who, by order of the Sacred Congregation of the Council, examined Aurelius, gave the following sworn testimony:

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"1. The aforementioned Aurelius is clearly unable to make the sign of the cross with his right hand in the correct position, which, if freely performed, would immediately fall, forming an angle of nearly ninety degrees with his arm. "2. Based on the aforementioned observation, it is impossible for him to perform the sign of the cross with his right hand according to the rubrics, with the fingertips pointing towards the image of the cross and the palm of the hand towards the Gospel; rather, he makes the sign of the cross with the fingertips pointing towards his chest and the palm of the hand towards the Gospel." "3. Due to a weakness, infirmity, or fracture of the arm, or some other cause, it appears to me that he does possess some strength in his fingers, although he finds it difficult to receive the sacred hosts with his fingers and to administer Holy Communion." "4. The aforementioned Aurelius, although he receives the chalice irregularly, supporting it with his left hand, does raise it straight." "5. I did not see him standing in the proper place and with the necessary caution, before taking the chalice, to prevent the spilling of the sacred particles." "6. In the elevations and extensions of the arms, his right hand always remains inclined, so that uniformity, as prescribed by the rubrics, becomes impossible." "7. In the administration of the sacraments, in relation to the unction, I did not find him to have any difficulty in making the sign of the cross with his right thumb."

SYNOPTIC DISCUSSION: DISPENSATION SEEMS TO BE DENIED. Several legal authorities declare that irregularities are present in those who have a member, especially if it is essential for the sacrifice of the Mass, so weak that they are unfit to perform the sacred functions, or only with great indecency, or to the horror of those present. Thus, Reiffenstuel, in title 20, I, 1, Decret, n. 9: "Where the bodily defect is such,..."

[*Latin ed. p. 580*]

580. DEFECTS. If a defect either hinders the proper performance of the rite, especially the celebration of the Mass, or causes a noticeable deformity; then it introduces irregularity and prevents someone from being ordained. And Ligorius, *Opera Moralia*, I, 7, n. 404, states: "Irregularity is derived from two sources: either from a defect of the body, because it hinders the proper performance of the rite, or because it causes a noticeable indecency or horror." Thus, as stated by D. Thomas, *Supplementum*, 39, n. 6. Richter also holds the same opinion, *ad tit. 20, I, 1, Decretum*, n. 1, and others, generally. But in the case where the right arm and hand are impaired in performing their office; if it is impossible for the hand to remain straight, but always tends to incline due to its nature; then the person cannot properly form the cross, nor can he raise the chalice, nor take and distribute the sacred elements, without difficulty. These things are both improper in themselves, and with regard to ecclesiastical laws, they are certainly not fitting. For it is improper to violate the laws, especially in a case where the rubrics prescribed in the celebration of the Mass are

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true and binding laws. *Benedictus XIV, De Sacram. Missae*, s. 11, § 102. A DISPENSATION SEEMS ADVISABLE. However, it must be noted here that we are dealing with a slight violation or non-observance; and one that can produce little or no astonishment in those present. The people do not see how the cross is formed, nor how the chalice is received; and if they do see, certainly, when it is a slight defect, they do not notice. The inclination of the hand and its weakness, although it may be apparent and carry with it a bodily imperfection; nevertheless, it does not seem entirely reprehensible, nor such as to inspire horror or aversion in the minds of the faithful. Furthermore, I pass over the practice of the Holy Congregation, because, according to the circumstances of different times and places, it has always been varied: indeed, the Holy Congregation has not infrequently granted a dispensation for the sacred orders, even in cases of an equal, or even greater, imperfection of the right hand, as in Pamplona, March 31, 1860; but it is not uncommon in cases where...

[*Latin ed. p. 581*]

LEGION. On the 8th of [the month], the dispensation was denied, as happened in Padua on April 27, 1861; in which case, a cleric named Marini, otherwise healthy and sound, was lacking only three fingers, and those not essential, namely the middle and the ring finger, and yet he did not obtain the dispensation, nor did he in Policastro on March 21, 1863. For in granting these dispensations, the Sacred Congregation seems to have always taken into account, besides the intrinsic defect of nature, the necessity of the place and the recommendation of the Ordinary. But if even in the present case this criterion is to be considered, it seems to be lacking some element of judgment. For the Bishop is silent about the necessity of his church; indeed, he does not even recommend [the request], but merely confirms it with this testimony: "The facts stated are true." Considering these matters, the question was raised as to what should be answered regarding the prayers.

RESOLUTION. The Holy Congregation, having knowledge of the matter, on December 15, 1888, decided to respond: "It is not advisable."

COSENTINA CASE OF ABSOLUTION. On September 15, 1888. Through summary petitions.

COMPENDIUM OF THE CASE. The Archbishop of Cosenza reported to the Sacred Congregation concerning a parish priest of the churches of St. Stephen, St. Lawrence, and St. Cajetan, who was obligated to pay an annual dowry for the girls of the place, Lanrignano. However, from the year 1856, when he obtained the benefice, until the present time, he has abstained from this contribution, because he did not consider himself obligated to do so. But after the year 1886, while examining documents in the parish archive, he discovered that he was indeed obligated to pay the dowry. But while promising to fulfill his obligation in the future, he stated that he could not satisfy the obligations for the past, and therefore he was

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seeking absolution for those past obligations. The Archbishop noted that this [parish priest]...

[*Latin ed. p. 582*]

582. The parish priest of Gusentina lived so miserably that, for this reason, he had obtained a recommendation from the archiepiscopal curia before the Most Holy [See] regarding the reduction of the tithes attached to his benefice. For this reason, the Archbishop implores and prays that such petitions from the parish priest be received with a benevolent favor. When asked whether any opposition might arise from the part of young women who have an interest in the matter, the same Prelate replied that no opposition could arise; firstly, because it concerns the most docile rural families; secondly, because, after 24 years, the memory of this matter has completely vanished; therefore, if this right were to be revived, they would rejoice, forgetting the past. Having related these facts, it scarcely seems that anything can be added to the legal argument. Indeed, dispensations, especially in cases concerning piety and morality, and those affecting the rights of third parties, are odious and should not be granted without a serious reason; but whether the good faith of the parish priest, the poverty of the parish benefice, the impossibility of fulfilling all obligations, and the acquiescence or silence of those who have an interest, constitute such a serious reason, was left to the judgment of the Most Reverend Fathers. With these matters noted, the question was raised as to how the petitions should be decided. RESOLUTION. The Sacred Congregation of the Council, having considered the matter, on September 15, 1888, decided to respond: "For the granting of a dispensation regarding the past." DIVISION. REGARDING THE FUTURE. On January 18, 1889. Through summary petitions. SUMMARY OF THE CASE. The priest Heron, in supplicating letters, reported the following: "That he is the parish priest of the church commonly called Saint Seine l'Abbaye, and also of another parish..."

[*Latin ed. p. 583*]

DIVIO. The parish of Vaux-Saules, situated at a considerable and arduous distance, received him to minister to its needs. He willingly accepted this charge, for otherwise, given the scarcity of priests in the Diocese of Dijon, the people of Vaux-Saules would lack a pastor. However, being assigned to two parishes, he bears a double burden in applying the Mass to the people. "Indeed, the Indult granted to the Most Reverend Bishop of Dijon on April 4, 1887, satisfies the obligation of offering a Mass for the people, besides the days for which the faculty of saying two Masses exists. — But it often happens that in the parish of St. Seine l'Abbaye, another priest resides temporarily; therefore, the pastor, whether on Sundays or on feast days, when the faculty of saying two Masses is lost due to the presence of another priest, is obligated to apply another Mass for the parish where he

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does not celebrate. — On the other hand, since the parish of Vaux-Saules consists of three villages situated at a considerable distance from each other and from the church, the Masses celebrated on feast days for the sake of devotion, as they say in Gallia, are attended by only a very small number of people. Therefore, the aforementioned priest, either due to excessive fatigue or due to the lack of people present, abstains from celebrating again on these days, which does not seem to be contrary to the law or practice of the Roman Church. In this case, however, as in the first, the obligation of applying a Mass for the other parish remains." "Therefore, mindful of the Encyclical letter *s. m.* of the Most Beloved Pope Pius IX, where - 'Since it is clear to us that particular circumstances can arise in which, for the sake of expediency and time, the remission of this obligation should be granted to the pastor,' - the aforementioned priest of Dijon humbly requests that Your Holiness deign to grant him the faculty of satisfying the double burden with only one Mass, whenever, for whatever reason, he celebrates only one Mass on Sundays and feast days. " The Ordinary of Dijon transmitted these requests, signing: "Seen and approved."

[*Latin ed. p. 584*]

584. DIVISION. A Synopsis of the Matter. Therefore, the parish priest, who is in charge of two parishes, requests a dispensation from the obligation to offer a Mass for the people, in a specific case, when he does not celebrate a second Mass, either because of the casual presence of another priest in one of the parishes, or on suppressed feasts in which there is less attendance of the people, and therefore he abstains from celebrating the Holy Sacrifice. In the book *Lumen*, under the heading "Application of Masses for the People," a doubt is raised: "Whether parish priests who are in charge of two parish churches are obligated on Sundays and other feast days to offer a Mass in one of the churches, either by themselves or through another." The Sacred Congregation of the Council responded on March 12, 1774: "Affirmatively, except for parishes united by a plenary and extirpating union." This prescription of the Sacred Congregation has been consistently observed and is binding on all. It does not harm the reasoning of Pope Benedict XIV, who has never said anything about the burden of offering a Mass in different parishes to a single parish priest; indeed, sound reason dictates what the Sacred Congregation maintains, namely, that just as each parish is granted its own particular benefits to the pastor, so too it possesses its own rights; and therefore, he who undertakes its care and receives temporal benefits, must, in turn, render spiritual services, and among these spiritual services, the offering of Mass. But he who is in charge of two parishes receives double benefits. Therefore, speaking absolutely and according to the strictness of the law, the requested dispensation from offering a Mass for the people would not be granted. However, ordinarily in Gallus, the parish priest receives 400 livres, or a similar small sum, for

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the work he performs for the second parish. Furthermore, although the two parishes are not, at least in law, united by a plenary and extirpating union, in fact, their union is very similar. Considering these circumstances, the question was raised as to how the petitioner's requests should be answered. RESOLUTION. After deliberation, the Sacred Congregation decided on January 19, 1889, to respond as follows: "Regarding Sundays and other..."

[*Latin ed. p. 585*]

DIVISION. 585. Feast days are observed, in which, if a priest happens to reside in a parish other than the parish of Seme l'Abbaye, and is unable or unwilling to celebrate the feast day in a suitable manner in another parish, it is permitted to the parish priest for that parish to repeat the sacred service; but on days that are suppressed, it is not permitted to repeat the sacred service, and provision is made for this by a rescript of April 4, 1887. ORITANA PROCESSION. On January 19, 1889, Session 21, Chapter 3, Concerning Reforms. SUMMARY OF THE FACTS. From ancient times, on the sixth day of the week, in Manduria, in the Oritana Diocese, a procession has been held in memory of the Passion and Death of the Lord. In the evening, in the collegiate church, the church of this place, together with the chapter, two sodalities, the Sodality of the Most Holy Sacrament and the Sodality of the Holy Death, and a large number of faithful people gather; and after hearing the sacred sermon appropriate to this day, a procession is ordered through the town in this manner: first proceeds the sodality of the Most Holy Sacrament, followed by the arch-sodality of the Holy Death, and then the clergy; from the arch-sodality of the Holy Death, some carry the statue of the Sorrowful Virgin; and certain members of the Most Holy Sacrament, as it is read in the processional book of this confraternity, carry the image of the deceased Savior at the end of the procession. Furthermore, these two sodalities contend with each other, each claiming a certain primacy in leading this sacred procession. But I will immediately say that peace between the parties has existed from ancient times until the year 1769; the chapter of the collegiate church itself has ordered all that pertains to the sacred function, by itself and absolutely. Subsequently, however, the arch-sodality of the Holy Death has claimed to have succeeded to the rights of the chapter, through properly executed concessions and conventions, and maintains that it is in peaceful possession of this right. But rather, this kind of right is...

[*Latin ed. p. 586*]

586. The Brotherhood of the Most Holy Sacrament desires to have its rights and privileges fully recognized, even concerning matters of fact. This question arose a few years ago and was immediately referred by the Archconfraternity of the Holy Death to the Auxiliary Bishop, while he was visiting Manduria. However, considering the sentiments of all

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parties, he judged that the matter should not be decided during the Sacred Visitation, but rather should be reserved for a more complete and mature judgment, and therefore he instructed both confraternities to submit their written arguments to the Oratorian Curia, so that the matter could be resolved there. The confraternities obeyed these instructions. And the Auxiliary Bishop, after carefully examining the documents from both sides, also considered it necessary to consult the Chapter of Manduria, since it seemed to play a significant role in this sacred function. For, it was stated, the supplication took place in its church, and formerly it was the sole promoter and director of this celebration, and today, it only performs certain parts of it as an auxiliary or vicar. The Chapter, duly convened, judged that the arguments presented by the Archconfraternity of the Holy Death were more realistic and more in accordance with the truth of the facts and the traditions of the past; therefore, it recognized the privilege that the Confraternity of the Holy Death had exercised from time immemorial regarding the ordering of the feast day on the sixth day of the week in the evening, independently of the Confraternity of the Most Holy Sacrament; but dependent on the decision of the Chapter concerning the same feast. And the Chapter, after examining the documents presented by the Confraternity of the Holy Death, and considering the secular custom of this feast, also approved, at the request of the Confraternity of the Most Holy Sacrament, the ancient concession of carrying the sacred corpse, so that the Chapter would not prefer to do so itself. Having received the opinion of the Chapter, the Bishop more maturely and comprehensively considered the entire matter, and finally, on March 5th of the following year, 1887, he issued his judgment, in which, after several considerations, he concluded as follows: "Considering these matters, the Curia, upholding and maintaining all the rights of the Chapter of Manduria concerning said procession, declares that it pertains to the Confraternity of the Holy Death."

[*Latin ed. p. 587*]

ORITANA 587 and the direction concerning the procession on the sixth day before the Sabbath, and prohibits any other innovation, saving the obligation of requesting the necessary permissions from the Curia itself. Although this decree did not please the sodality of the Most Holy Sacrament, nevertheless its canonical Rector, Stano, deemed it necessary to acquiesce. However, the members of the sodality, in a meeting on March 25, 1887, considered it necessary to appeal against the vote of their Rector to a higher tribunal; for this reason, the canonical Rector Stano relinquished his office. On March 31, the Prior of the sodality filed an appeal. However, the Bishop considered that the fatal provocation should be rejected, and decreed this on April 5; therefore, the sodality appealed to the Holy See, requesting that all acts of the Oritan court be declared null and void due to defects, both

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in substance and in form, or, if that is not possible, that the sodality be restored and the judgment given be revoked.

A SYNOPTIC DISCUSSION OF THE RIGHTS OF THE SODALITY OF THE MOST HOLY SACRAMENT. Those who are involved in the affairs of the sodality of the Most Holy Sacrament first send a notification to the authority concerning the matter which is proposed in the first instance regarding the scope of the proceedings. Indeed, it states that, although it is certain that the introductory document of the lawsuit was omitted, and that no mandate was given to the Rector, Stano, by the Confraternity to pursue the lawsuit, and therefore, according to the provisions of §§ 779 and 780 of the Gregorian Code, since both of these are substantial defects, the judgment of the Oritan court should be declared null; nevertheless, since such a judgment of nullity was not brought to light until September 16, after an appeal had been filed against it on March 31 of the preceding year, and it thus appeared to be recognized, considering pages 784 and 787 of the same Code, it concedes that the scope of the proceedings can no longer be challenged. But it contends that the matter has not been judged, because the notification of the judgment was made to one Vincent Stano, as Rector and procurator of the Confraternity, and not to the Prior of the Confraternity itself, contrary to what is prescribed on page 611 of the Code.

[*Latin ed. p. 588*]

588 The Gregorian Code states: "The authentic copy of the sentence in its executive form shall be fully notified to the attorney of the other party, once constituted, even if he was present at the pronouncement of the sentence; and likewise, it shall be notified to that party itself." (1) Because of this defect, fatal errors, which never cease to be mentioned, are said to have occurred, and it is entirely true that the appeal filed on March 31st was useful, and consequently, the matter of *res judicata* could not have arisen in any way. Furthermore, it is alleged that the appeal was rejected by the Auxiliary Bishop himself; for, as stated on page 996 of the Gregorian Code: "If a dispute arises concerning the appealability of the sentence, it shall be decided preliminarily by the courts of second instance, in the manner prescribed for incidental motions." (2) Therefore, the Oritana court did not possess any legitimate right to reject the appeal petition, but rather, it should have forwarded it to the judge of the second instance. Having removed the obstacle of *res judicata*, when the controversy comes to be judged on its merits, the advocate accumulates more arguments to support the good right of the sodality from the Most Holy Sacrament. And first, he presents the expenses that the sodality incurs each year for the procession, and the stipends that it is obligated to pay for the same each year. It cannot be conceived that the sodality would have undertaken these actions and incurred these expenses for a matter to which it has no right. Furthermore, it is objected that the Confraternity of the Most Holy Sacrament, by virtue

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of its own statutes, is obligated to provide assistance to the parish priest in all functions, and to bear the expenses for these; but since, as the Oritana court's sentence itself states, the procession was consistently carried out not by the parish priest, but by the Chapter of the Collegiate Church, this title, from which the generosity of the sodality of the Most Holy Sacrament is presumed, seems to be lacking.

(1) In Latin: "Authenticum exemplar sententiae in forma executiva notificabitur per integrum procuratori alterius partis, quatenus constitus fuerit, etsi praesens fuerit pronunciatum sententiae; parique molo notificabitur ipsi parti."

(2) In Latin: "Si enascatur quaestio an a Sententia appellari queat, resoivetur prius a Tribunalibus secundae instantiae in forma praescripta quoad petitiones incidentales."

[*Latin ed. p. 589*]

ORITANA 589 Furthermore, it must be noted that this Brotherhood has retained the right to hold processions for over a hundred years. Moreover, it is no secret how much weight a custom of such antiquity carries, as evidenced in the judgment of the Neapolitan or Beneventan Court of Appeal, dated March 15, 1819, before Martinez dei Campo, page 5, and also in Nepeta, in the legal proceedings of January 29, 1821, before Serluppi, page 10, etc. Indeed, even civil authority has recognized this right, as demonstrated by the testimony of the priest Xaverio Polverino. And finally, this is confirmed by the presumption arising from this very circumstance, namely, that a sodality dedicated to the Most Holy Sacrament exists within the Collegiate Church, while the Brotherhood of Prayer is entirely external. What the opposing party asserts, namely, that the right to the procession belongs to them because they have borne the expenses of the procession, is easily refuted. For, according to the advocate of the opposing party, the Brotherhood of Prayer and Mortification only bore these expenses from the year 1860, and that only for extraordinary occasions, and not separately, but together with the Brotherhood of the Most Holy Sacrament. This is proven by the testimony of many inhabitants. Furthermore, as the very judgment of Oritana states, from the year 1827 to the year 1860, the Brotherhood of Prayer and Mortification did not incur any expenses for the procession; therefore, the right itself was established by prescription, according to Rotam in decisions 265, number 5; 315, number 47; 383, number 16, part 4, volume 2. It cannot be maintained that the Archisodality of Mortification has relinquished its own right concerning the organization of the procession, since it is clear from the individual acts of the Chapter, which have been presented, that the Chapter only granted this Archisodality the faculty of participating in the procession. This is again stated by the very judgment of Oritana. Therefore, according to the advocate, it is not proven that the Archisodality of Mortification has relinquished its capitular right.

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THE RIGHTS OF THE BROTHERHOOD OF PRAYER AND MORTIFICATION. Conversely, the advocate of the Archisodality of Prayer and Mortification, above all, defends the validity of the proceedings. And to this end, he recalls...

[*Latin ed. p. 590*]

590. The Oratory presented its case to the Ordinary, by whatever means, and both associations were compelled to present their arguments, and both presented the points they considered relevant. The Bishop carefully examined everything, questioned the representatives of each association, and finally, after mature deliberation, rendered his judgment. The association of the Most Holy Sacrament objected, claiming that it had not been properly summoned. But the advocate for the opposing association responded that, even if this were true, the alleged defect in the summons had been sufficiently remedied and waived by the appearance and participation of the association in the proceedings. Indeed, De Luca, in *De Beneficiis*, discourse 50, paragraph 6, states: "When the party summoned appears, every defect in the summons is cured." And more clearly, De Iuris Adiuiciis, discourse 9, paragraph 46, the same author writes: "Since the purpose of a summons is to inform the party being summoned and to bring them before the court, therefore, the appearance of that party, or its acknowledgement of the summons, remedies any defect in the summons." And again, in discourse 32, number 24: "Therefore, any defect in the summons, whether it exists in substance or in form, is remedied by the appearance of the party, when the purpose or effect for which it is required by law is fulfilled." Furthermore, the Gregorian Code, in article 784, states: "The defect in the summons is remedied: 1. If the party not summoned appears in court and presents its arguments or defenses on the merits, without alleging nullity; 2. If the same party not summoned files an appeal without alleging the nullity of the judgment appealed from."

However, the advocate continued, both of these conditions are met in the present case, for the association of the Most Holy Sacrament appeared in the court of first instance, presented its arguments and evidence, and appealed the judgment then rendered, seeking to overturn it. Therefore, this objection should be dismissed at the very outset.

(1) In Latin: "Remissus vel sanatus est defectus citationis: 1. Si pars non citata comparet in iudicium, atque deducit proprias rationes aut defensiones in merito, quin alleget nullitatem. 2. Si pars eadem non citata appellationem interponit, quin de nullitate accuset sententiam appellatam."

[*Latin ed. p. 591*]

591. Nor is there any ground for objection in the matter of the right of appeal. For the patron of the archconfraternity, having duly noted the solemn

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sanction of both jurisdictions regarding the period of ten days allowed for appealing, recalls that the judgment of the first instance was pronounced on the 9th, and that only on the 31st of the same month was the appeal presented, which is manifestly after the fatal deadline. Nor does it matter that the Oritana court improperly and invalidly rejected the petition for appeal, since it ought rather to have referred it to the superior tribunal. For, by reason of this invalid act, the judgment previously rendered is not thereby overturned, nor are the rights of the confraternity of the Most Holy Sacrament restored. Therefore, it is true that the Oritana court acted improperly; nevertheless, "nothing ought to be vitiated by useless faults," according to rule 37 of the sixth book of canon law. Hence, notwithstanding this, the matter already judged appears to remain valid. Whether restitution in integrum is to be granted against this judgment, or not, according to the common doctrine expressed in pages 1057 and 1058 of the Gregorian Code, depends on whether there has been a manifest injury to justice. But the patron contends that this has not occurred, but rather that the judgment was rendered entirely according to truth and justice. To prove this, he first recalls that the Oritana judge posed this question to him: to which of the two confraternities does the direction and ordering of the procession on the feast of the sixth day of the week, in the evening, belong? But then, considering that the right to hold said procession belongs to the Chapter, and that it can be granted by the Chapter to anyone; considering that the Chapter, by its vote, recognized in the confraternity of the Dead such a right, based on the arguments presented; considering that the confraternity of the Dead, according to ancient custom, has directed such processions and borne their expenses; the matter was concluded in favor of the confraternities of Prayer and the Dead. And rightly so; for it is beyond dispute that the right in question belongs to the collegiate Chapter; and therefore, it is to that Chapter that it belongs to permit it to whomever it pleases. Furthermore, in the statutes of the confraternity of Prayer and the Dead,

[*Latin ed. p. 592*]

592. The *Ordinata*, approved by royal decree in the year 1716, mentions the sacred function, of which we are speaking, as being associated with this confraternity. And further on, where the matter of the sacred functions performed by the confraternity is discussed, the procession on the feast day of Friday in Holy Week is mentioned, of which we are speaking. Indeed, it is known that, from the previous century until now, only one archconfraternity has requested and obtained permission from the chapter to lead a procession, and has consistently borne the necessary expenses for it, as evidenced by authentic records excerpted from the archives, which are also mentioned in summaries. But, in addition to these things, the archconfraternity possesses a solemn and precise recognition of its rights from the civil authorities; and this is of greater importance, the more ancient its origins. A

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letter from the Minister of State Secrets, dated March 2, 1839, is presented, in which it is declared that permission is granted for the procession to take place in the evening of Friday in Holy Week, to be carried out by the confraternity under the title of "Death." Finally, in favor of the archconfraternity, this circumstance also occurs: namely, that while in other processions the confraternity of the Most Holy Sacrament precedes, in this one procession, which takes place on Friday in Holy Week, it holds a secondary position; indeed, it does not even carry a banner; but proceeds immediately after the cross: while the archconfraternity follows and occupies a more prominent position. This, as is clear, is an evident sign that in this sacred function, the archconfraternity plays the primary role, and the confraternity of the Most Holy Sacrament participates only as an accessory. (1) Considering these points, the following questions have been raised: I. Whether there is room for circumscription of the actions, and to what extent negatively. II. Whether there is a question of *res judicata*, or rather, of restoring the institution to its integrity. (1) See Vol. II, 296; Vol. XIII, 162; Vol. XVII, 114, in this matter.

[*Latin ed. p. 593*]

ORITANA 093 E and – insofar as it pertains negatively to the first part, and affirmatively to the second part. Whether the opinion is to be confirmed or refuted in this case. RESOLUTION. The Sacred Congregation, having discussed the matter on January 19, 1889, decided to respond: Regarding I, II, and III, the direction and ordering of the procession in this case pertains to the Chapter, with prior permission of the Bishop. FROM WHICH WE GATHER. Through this resolution, the matter has been returned to its natural principle; thus, after removing the causes of disturbance and discord, either the Chapter itself, or mediately through a sodality which it deems preferable from among two, will direct said procession. AQUEN, OR MASSILIA. MARRIAGE. On February 16, 1889. Session 24, chapter 3, concerning reforms. SUMMARY OF THE FACTS. Lazarina Massol, born in Massiliae, where her parents have resided for many years, still a minor, having been orphaned by the death of her father, and, as was fitting, not being able to be properly cared for and instructed, was placed in the religious house of Saint Joseph of the Cobol, which had recently been established in the territory of Massiliae. This occurred on April 8, 1865, when Lazarina had just turned sixteen years of age. A little later, and precisely on June 15, 1865, she was either forcibly taken from the monastery, or fled from it, with a military man, Baron Alphrido d'Outhoorn, who was also a citizen of Massiliae, and first went to Toulon, from where, departing quickly, they traveled together with Alphrido, visiting various places in Italy, Germany, and Switzerland; and finally, they arrived in Vevey, in the Valesian district of Switzerland. Having stayed there for several days, and at the request of Alphrido, Alphrido Vitrif also arrived. Tom. XXI. fase. O

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C L. 38.

[*Latin ed. p. 594*]

59. AT AIX. OR MARSEILLES. Concerning Peter Marquet, it is reported that a religious marriage was entered into. This was indeed celebrated through a delegation from the parish of Vevey on October 5, 1865, in the nearby town of Saint-Maur, by the parish priest of that place, in the presence of Peter Marquet and sacramental witnesses. Thus, the records of the church of Saint-Maur attest. It is noteworthy, however, that in the town of Saint-Maur, while the marriage was indeed published, it was not published in Vevey. Subsequently, the couple appears to have come not to their homeland, but to Italy, and resided in Genoa, until Lazarina reached the age of twenty-one, that is, until she reached her majority. Then, they returned to France, and having already conceived two children, they entered into a civil marriage, with the eventual consent of Lazarina's mother, who had previously resisted; but this union proved unhappy. Indeed, after a few years, a separation occurred, which, however, did not happen immediately, but later, on December 17, 1884, when a decree of full divorce was issued by a civil judge. Subsequently, Lazarina joined the Archbishop of Aix, Forcade, who had recently passed away; but he indicated to her that the cause she wished to pursue should be brought before the court in Marseilles. However, the Ordinary of Marseilles initially refused. And when Lazarina appealed to the Holy See, pleading that her cause for the nullity of her marriage be introduced before the Sacred Congregation, she was, according to what can be gathered from the records, taken from her home and, possibly, improperly, and was ordered to initiate the process, according to the sacred canons. The Sacred Congregation then requested information and an opinion from both the Ordinary of Marseilles and the Ordinary of Aix regarding this matter. Both responded, first the Archbishop, and then the suffragan of Marseilles. Upon receiving these responses, and having examined the records, the Sacred Congregation, considering that the court of Marseilles did not appear inclined to initiate this process, ordered that it be carried out by the Metropolitan Court of Aix.

[*Latin ed. p. 595*]

ACQUI. OR MARSEILLES. 595. A SYNOPTIC DISCUSSION. DEFENSE OF THE WOMAN. Furthermore, the patron, in the first place and in the specific matter, considers the character of the baron and his client. For he is lacking in religion, openly practices atheism, and publicly commits adultery, as the archiepiscopal court states; indeed, he is one whom his own niece ought to condemn, of whom his own stepson gives the worst testimony. Moreover, he is bound by close friendship with a certain Aloysius Bonifay, who, in turn, is very intimate with the senior of the

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general vicars of Marseilles. Bonifay, moreover, is connected with the families of Luce and Bernis, who were heirs to the estate of the lawyer Massol d'Andre, and they, namely Lazarina, this Lazarina's adversary, have been slandered and calumniated, and thus occupy the minds of the officials of the Marseilles court. And thus, the animosity of these officials towards the actress is explained; as if the patron and the metropolitan court were considering her. Conversely, Lazarina is said to be endowed with the best qualities of sincerity, honesty, and religion, by the nuns who once had her as a student, by the deceased Archbishop of Acqui, Forcade, by the current Metropolitan Bishop, and by the Bishop of Lausanne, as well as by all the witnesses presented; she is attacked only by Bonifay and the Marseilles court; which, however, is easily explained by the reasons already mentioned. With these premises, the patron, in the first place, directs his arguments to demonstrate the vice of clandestine marriage. In this, two things are said to be evident, which cannot be denied: 1. that the marriage was begun in the town and church of Saint-Maurice in the territory of Saint-Maurice, in Switzerland, by a priest delegated from another town in Switzerland, named Vevey; 2. that in the town of Saint-Maurice, the decree of Trent concerning the form to be observed in marriages is in force, but not in the town of Vevey. The first is established by a legitimate...

[*Latin ed. p. 596*]

In Marseilles, testimony having been presented and recorded, the Bishop of San himself confirms the matter. Given these circumstances, only one question remains to be investigated regarding the validity of the marriage: whether the parish priest of Vibisc, who granted the dispensation, was, by reason of domicile or quasi-domicile, the proper parish priest of the contracting parties, or not. However, it is irrelevant to inquire about the parish priest of Saint Maurice, since the stepson of the groom and the mediator of the celebration, Marquet, states: "We arrived at Saint Maurice not precisely the day before, but a day or two before the celebration of the marriage, all of us staying together in the only suitable lodging available in that place." But the very fact that the dispensation was requested and granted indicates that the parish priest of Saint Maurice did not possess the legitimate authority to act in the matter. Furthermore, the advocate argues that the bride and groom did not have a domicile or quasi-domicile in Vibisc, citing the brief stays and travels that followed the abduction: the man, in order to avoid being apprehended by justice and to escape the penalties for abduction, traveled here and there for three months, visiting fifteen places in Italy, Switzerland, and Germany, appearing as a transient and fugitive. Moreover, even if the young people had stayed in Vibisc for a month, it does not necessarily follow that they had established a quasi-domicile there; for, according to the teaching of Cardinal Tarquini in *Romana Matrimonii* of January 1868,

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it cannot be doubted that "the acquisition of a quasi-domicile, in addition to actual residence, requires the simultaneous intention to continue that residence for a significant portion of the year... and that a residence of only one month is merely an indication that such an intention is genuinely and sincerely held" (1). However, the very presence of the man strongly suggests that the young people did not stay in Vibisc for even a month. Furthermore, a civil official of Vibisc can attest to this fact. This could also be ascertained from the innkeepers. For in that region, as elsewhere, they are required to register their guests, those whom they have recently hosted (1). *Recole* Vol. XI, 567, Appendix II, regarding domicile for the validity of marriage. As for the doctrine of domicile and quasi-domicile.

[*Latin ed. p. 597*]

At Aquen, or Marseilles, 597 individuals were registered, and their names were made public through publications. In Vevey, this registration takes place every week in a journal called "Journal de Vevey." Indeed, the lawyer Jaquier testifies that our individuals were not found, "with the exception of the list published on October 12, 1865, which contains the following entry: Hotel du lac... Marquet and his family." However, these names are absent from the lists of the 5th and subsequent days, specifically the 19th. It follows that these individuals should have been considered as residing temporarily, and therefore any parish priest, including the priest of Vevey, should have been able to validly join them in marriage. Ulpian, in his writings, book 50, addressed to the Municipal authorities, section E, states: "This is the procedure, if someone, having left his home, travels or undertakes a journey, to determine where he resides or where he intends to establish himself." Reiffenstuel, in book 4, part 3, number 85, and Sánchez and other canonists, hold the same view. Furthermore, none of our individuals had abandoned their home, nor were they seeking a new one; indeed, the wife, as the defender argues, had left unwillingly, but neither did the husband, who, having consummated the marriage as quickly as possible to conceal the crime of abduction, subsequently sought to return to his homeland. It is not surprising that a priest so rashly and contrary to Catholic law performed the marriage, for, as the defender states, it is most regrettable that in Switzerland, among many priests, there is this facility for sinning, as several examples known to the Holy Office demonstrate. The court of Marseilles, which is so eager to defend this marriage, presents letters from the priest Gignoux, who affirms that at that time, the Vicar General of Marseilles, Guiol, was traveling in Switzerland, and that, having been approached and requested by Marquet, he granted permission to the priest Gignoux to perform the marriage of Baron d'Outhoorn to Lazarina. Furthermore, the priest Gignoux concludes, he was present when the marriage was celebrated in the town of Saint-Mauritius. After this declaration, he continues, the man

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and the woman again visited Vevey; where the parish priest Mantel, in order to be...

[*Latin ed. p. 598*]

598. AT AQUEN. OR MASSILIENSIS. He has sought to establish that these individuals acquired a domicile, or a quasi-domicile. But the advocate replies that all of this must be rejected immediately, not only because the documents are found to be written in a fearful and hesitant manner by the priest Gignoux, not only because the accounts related to the Massiliensis Curia Lazarina are entirely false, where indeed the Vicar General is very closely connected with Bonifay, who vehemently hates the Lazarists, not only because these matters are extrajudicial; but also because they are full of errors and improbabilities. The author of the delegation is chosen from among those who have been dead for a long time: and the delegate, as he is called, uses this power to warn anyone, not just the parish priests of Vibis and Saint Maur, not just the parties, not even the Bishop; indeed, he allows a marriage to be celebrated by a delegate from another parish. It is alleged that marriages have been celebrated by a delegate from the parish of Vibis. And this is not enough; for if the Vicar General of Massiliensis had delegated the priest Gignoux to bless a marriage, it would be utterly useless now to consult another parish priest, to establish the domicile of Vibis, to report the delegation from the parish priest of Vibis. But furthermore, it is false, as appears from the testimony of the civil magistrate, that the declaration of domicile of the spouses of Vibis was requested and obtained: false, that the Vicar General Guiol extended his jurisdiction to the priest Gignoux "in the presence of Mr. Marquet"; for this man vehemently denies it: and in the letters sent, Marquet, the supposed stepfather of the Lazarist, is wrongly called the stepfather of the barons d'Outhoorn. Given these circumstances, the advocate believes that nothing should be made of these letters; and consequently, the marriage appears to have been celebrated clandestinely, and therefore is null and void. This is further confirmed by the testimony of the witness. The Baron d'Outhoorn contends, and has always professed, and proclaims to his own detriment, that the young woman was abducted by him, but with her consent. Nevertheless, the advocate maintains that, even with this admitted, the marriage is nonetheless null.

[*Latin ed. p. 599*]

Indeed, the law, with such severity, pursued the perpetrators of abduction, as Justinian I, in his decree "De raptu viri," (Concerning the abduction of a woman), in the first century, decreed that the abductors should not only be punished with the penalty of death, but also that the "abducted virgin, or widow, or any woman, should be able to denounce her abductor as her husband." And in § 3, he added: "All must be subject to this penalty, whether it be virgin or other women, if such a crime has been

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committed." However, in the following centuries, this rigor began to be relaxed; but the old discipline was restored by the Council of Trent, because in chapter O of the 24th session, "De reform. matrim.," (Concerning the reform of marriage), it decreed: "As long as she remains in the power of the abductor, no marriage can be validly contracted between the abductor and the abducted woman." Furthermore, in Trent, a canon under the title "Raptus" (Abduction) includes not only abduction by force, but also seduction, when at least the woman is still a minor, and she consents to running away against the will of her parents; and this can be proven in several ways; and 1. because the Council of Trent wished to restore civil law, and civil law considers the seduction of a minor who consents to running away against the will of her parents, as abduction, according to the alleged law of Justinian; 2. because the Sacred Congregation of the Council, in the year 1608, definitively defined: "The process may proceed even if the woman is willing, as long as she has been abducted according to the terms of civil law"; 3. because Navarrus, a contemporary of the Fathers of the Council of Trent, and perhaps familiar with them, teaches that "the consent of the girl to be abducted is not sufficient to say that she was not abducted; because it is sufficient to say that she was abducted if she was taken away from her home against the will of her father, whether this is done with the will of the girl, or against her will." However, Cardinal De Luca believes that Navarrus should be given the greatest authority because of his relationship with the Fathers of the Council of Trent and his presence among them. Sánchez, on the other hand, argues that the abduction of a minor girl, even with the consent of the girl, is an abduction if it is against the will of her parents; but if we must contend with the authorities, then Navarrus and De Luca, as cited above, are already against Sánchez, but in addition, Cosci, Barbosa, Riganti, Berardi, Corradus, Ricci, Mascard, and others...

[*Latin ed. p. 600*]

600. AQUÉN. OR MASSILIEN. Certain authors, citing a vow made by duty before the general resolution of the Sacred Congregation of the Council in the year 1608, as mentioned above, and finally, the disciplinary law for the Austrian Empire, approved by the Holy See, support this view. And the reasons are these. For as Riganti notes, "it is one thing to consent to abduction, and another to consent to marriage, and therefore, consent to abduction does not imply consent to marriage." Thus, Ballerinus in his notes on Gury, and the aforementioned vow made by duty, also support this. It is objected, however, that if an honest girl consents to being abducted, this should be presumed to be a prelude to a subsequent marriage. But it is clear how often it can happen that an inexperienced girl, seduced by deceptions and enticements, only later realizes the danger, whether it be the detriment to her family, the theft of her dowry, or other things that, had she known them beforehand, would have prevented her from undertaking

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such a course. Furthermore, it is false to claim that violence is absent in the abduction of a consenting girl. For in a girl of tender years, force and deceit are equal. "For if the abductor does not solicit her, if he does not surround her with odious arts, he will not make her willing to expose herself to such dishonor," says Justinian in the aforementioned passage, and the Rota in Leodien, decree 498, page 14, Bec. "Since a girl is always presumed to have been deceived by cunning wiles, can her flight ever be said to stem from free consent?" Therefore, the theory to the contrary seems to favor not freedom to marry, but license to abduct. Moreover, in the case of a girl who is not of her own free will, the force exerted upon her parents must also be considered. "According to common human sense and usage, if a girl is abducted from her home while sleeping, or studying, or even while outside the house, by her father or guardian, through persuasion and flattery, or with other suggestions, so that there is no true and positive force exerted upon the father or upon the girl herself; nevertheless, if one were to ask the entire population, even the common people, according to common human sense and usage, they would say that the girl has been criminally and illicitly abducted from her father's home or from the home of another guardian." Finally, if the contrary opinion were to be admitted, it would be utterly futile—

[*Latin ed. p. 601*]

At Aquen, or Massilia. 601. The law, which formerly, and now very rarely, permits abduction with arms, force, and absolute violence. Therefore, as De Luca observed: "This conciliar decree, so carefully worded, would remain a matter of debate, and it would never be too rarely verifiable, if it were understood that the abduction occurred with positive violence." Indeed, not only the authority of the Doctor, and the weight of reasons, but also the judgment of many things support the stated opinion. And first of all, in its favor, is the general resolution of the year 1608, mentioned above. In the aforementioned Rota in Leodien., it was decided that "it remains true that, even if the girl consents, abduction is committed, both with respect to punishment and the annulment of marriage... And the Holy Office removed all doubt, establishing that the conciliar disposition should claim its place, both in relation to the nullity of marriage, and to the penalties against him who abducted the consenting girl, without her knowledge, under whose guardianship she was." Therefore, the old discipline remains, and should be maintained, that the abduction of a minor girl, even if she consents, but against the will of her parents, constitutes a true abduction: with only one exception, namely, if the betrothal has been duly performed; as Ballerini states in the notes to Grury, vol. 2, De Matrim., cap. 6, no. 857. But in our case, such a betrothal would not in the least precede the abduction. For one man affirms it, but the wife vehemently denies it. But let us grant that, at times, Lazarinani

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seemed to show herself more favorably disposed towards the baron; nevertheless, this does not mean that the betrothal was duly performed. For, according to (jury Com. theol. mor. n. 625 and elsewhere), the Doctor states that a common promise, which more suggests an intention, is not sufficient; but a mutual and serious betrothal is required. This is even more important in our case, especially when it concerns the abduction of a consenting girl. For, as De Luca rightly observes in Dis. 28 ad S. Conc. Trid. n. 16, "there seems to be some ambiguity in this."

[*Latin ed. p. 602*]

602. MASSILIA. Namely, those generic concerns which are commonly brought up by men, even out of lust, when taking simple girls as wives, are insufficient to prove that such a union is lawful: for if it were so easy to prove a kidnapping, and to thus render futile this so prudent and commendable provision, it would be easily circumvented. Furthermore, betrothals, which entail a bond affecting liberty, are never admitted unless they are clearly proven; "and it is necessary that these proofs be clearer than the midday sun," as Riganti states in his commentary on the regulations, 49, Canon 88, along with Cosci, *De separ.*, I, 1, chapter 15, number 26; and Ursayat, *Discept.*, 1, page 1, section 28, number 29. Moreover, betrothals are not only not proven conclusively, but are supported by a single and vague testimony of the man, while the fact of the abduction is absolutely denied by the girl, and is not even presumed by the girl's own adversary, Bonifay. This is not enough; for furthermore, these betrothals "have no validity if they are made against the will of just parents," as Cosci states in *De spons.*, volume 3, number 35, and again in *De separ.*, I, 1, chapter 11, number 54, where he writes: "Whenever betrothals of children of families have been made without the knowledge or with the just dissent of the parents, and especially with a person unworthy, they are prohibited for the most just reasons, not only by the Church, but by natural and divine law, and are therefore illicit." To this, the Rota in Vienna, *Sponsalium cor.*, Kaunitz, January 1705, adds that: "Indeed, the dissent of the parents has such efficacy that, even if the betrothals had been freely and purely made, nevertheless, with the subsequent indignation and dissent of the father... it can be a sufficient cause for their dissolution and annulment." Thus, the Sacred Congregation in Herbipolis, *Matrimonii*, April 24, 1858. Therefore, since the betrothals were not proven, were not lawful, and did not exist, it is permissible that, even if Lazarina had consented, she would nevertheless have been incapable of marriage. But it cannot be said that Lazarina consented, but rather that she was demonstrably and violently abducted. Indeed, says the...

[*Latin ed. p. 603*]

AQUEN. OR MASSILIEN. 603. In order to explain how a young girl,

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forgetting herself and her duty of modesty, could have so readily agreed to such a scandalous elopement, it is necessary to assume not only the absence of fear or aversion, but a strong affection for the abductor. However, the mother of Lazarine testifies that her daughter was constantly averse to the Baron, and that she herself, from the beginning, opposed these marriages, a fact confirmed by the witnesses Giraud, the notary Maurel, Emilia Gauthier, and Christina Marcoste. Furthermore, it is established that Lazarine had been in love with Anthony Ducroz from a young age, and had even pledged her fidelity to him. This is vehemently affirmed by Christina Marcoste, Emilia Gauthier, and Ferdinand Maurel. One of the nuns of the Abbey of Tours confesses that she knew this. This fact is irrefutably confirmed by the entirely explored event of Lazarine's escape and her reception by the parents of Anthony Ducroz. This occurred after Lazarine's mother, who had initially favored the Baron, rejected him, and shortly before the daughter was sent to a convent for the purpose of custody. Moreover, all of these circumstances suggest that Lazarine must have been, until the very end, averse to the Baron. But whoever claims that the girl consented to the abduction must now assume that a meeting, either in person or by letter, had been arranged beforehand. Bonifay, and some of the nuns, believe that this occurred at night and through a meeting; but this is made improbable by the vigilant surveillance of the nuns, and the presence of other companions, and especially by the dog, which, as is customary in fields and deserted places, was accustomed to guard the house and garden, and would have filled the night with its barking if anyone had approached. Therefore, it must be assumed that the escape was planned through letters. But Maria, from the Order of St. Dominic, states that this could not have happened, because all communication between those living in the monastery and those outside was impossible, and because the girl had been entrusted to the care of a very astute Sister. Therefore, it appears difficult and improbable that Lazarine could have had any correspondence with the Baron by letter.

[*Latin ed. p. 604*]

604. AT AQUEN. OR MASSILIEN. The aforementioned lord, however, insists that he both sent and received letters from the young woman; and that Aloysius Bonifay was the messenger who brought the letters to the young woman. Aloysius Bonifay, on the contrary, states that Lazarina did not give the letters to him, but to a certain young woman named Emilia Gautier; and that the letters were addressed not to the lord, but to his stepson. Therefore, the lord and his supporter, who are working together to oppose Lazarina, are not in agreement with each other; and this is a grave indication of deceit and falsehood. Moreover, there are those who were involved in the abduction, or who happened to be present; and these not only deny that Lazarina consented to the abduction, but even claim that she was

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forcibly taken, with her arms raised, and dragged into a carriage, almost dead. Indeed, the struggle between the young woman and the abductors was such that, according to Lazarina and her mother, witnesses, the actress still bears a mark of violence on her arm. The advocate considers this to be conclusive proof that there was no consent in the abduction. He readily accepts any arguments presented by the opposing side, which he undertakes to examine individually. First of all, Sister Mary, from the convent of St. Dominic, recounts that, on the evening that Lazarina disappeared, she saw her immediately leaving the dormitory, and hurrying rapidly towards the far end of the garden. Although these events may seem to suggest that Lazarina's departure occurred voluntarily, the advocate points out that this cannot be interpreted in that way. For, firstly, the nun who makes this statement, and others as well, would not dare to assert absolutely that the abduction occurred with the young woman's consent; they say indeed that rumors have spread that the young woman was willing to leave; but at the same time, they admit that they do not know whether such rumors had a legitimate basis, or not. Moreover, the advocate states that the nuns are convinced that the young woman's abduction was a disgrace to the convent, and that they would rather be condemned and punished than have such a scandalous event occur; and he notes that this conviction of the nuns is evident from their testimonies.

[*Latin ed. p. 605*]

"AQUÉN". OR MARSEILLES. 605 No better testimony exists than that of the priest Baudouin, coadjutor of the parish of Mazargues; for he himself confesses, regarding the abduction: "I do not know whether Lazarina resisted her abductor." Furthermore, the boy was eleven years old, residing in the town of Alcaucil, when these events occurred. He affirms that he recently learned of the matter through public rumors; and he repeats the story of the letters sent by Lazarina to Aemilia Gautier concerning the Baron; a story which Aemilia herself completely refutes. Therefore, this testimony proves nothing, and indeed, it can be considered suspect, given his deference to the authorities of Marseilles. Thus, only the testimony of Aloysius Bonifay remains; but among all, he is the most suspect in the beginning. Indeed, Bonifay himself provided abundant testimony about himself and his assertions; for after having testified before the judge, and having sworn an oath, he immediately "made a request that was impossible to grant, namely, that the Lady Lazarina never know what Bonifay had testified in court." But the depositions given by Bonifay are full of falsehoods and contradictions. Indeed, the very circumstances of the events, such as the girl's departure from the dining room, her walk in the garden, the prepared meeting with the man, the subsequent events, and everything else arranged, openly betray the Baron. For, for several days prior to the crime, the Baron had been plotting, as testified by the coachman Laval,

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who, having been driven by the Baron near the monastery on the day of the abduction, confesses that he saw Alphrid d'Outhoorn from the beginning, watching inside the walls, walking around, and returning, blaspheming and full of anger, saying, "Eight days have now passed since I have been trying to abduct the girl, but she does not appear." Therefore, since the testimonies concerning the violent abduction cannot be refuted by sufficient contrary arguments, and since, regarding the violent abduction, Lazarina's aversion to the Baron, and her affection for Anthony Ducroz, are evident, and since, finally, consent in the abduction is never presumed, but "the law presumes that she could not have willed it," as Mascard De proh. conci. says.

[*Latin ed. p. 606*]

606 AQUÉN. OR MASSILIEN. 1259, *cum Gury*, vol. 2, n. 857, *De matr.*, and elsewhere: It is to be noted that the advocate concludes that Lazarina was not stolen willingly, but was taken away by force and deceit. Furthermore, after the abduction, "the Holy Synod decrees that no marriage can exist between the abductor and the abducted." And it adds: "But if the abducted woman, after being separated from the abductor and placed in a safe and free place, consents to be his wife, then the abductor may take her as his wife." Therefore, as Van Espen notes, p. 2, f. 13, c. 10, n. 7, "there exists an impediment that prevents marriage between the abductor and the abducted as long as the woman remains in the power of the abductor, so that although the girl might truly consent to marry the abductor at that time, the marriage contracted in this way would nevertheless be null; and from this point, the Synod of Trent introduces a new impediment." Thus, after Trent, the validity of a marriage is not to be determined by the freedom of consent, but by the nature of the place in which the woman consents. However, it is clear that Lazarina, after the abduction, until the celebration of the marriage, and for a long time afterward, was not separated from the abductor and was not placed in a safe and free place. Bonifay, however, states that the girl was separated from the Baron for three months before the celebration of the marriage, according to local custom. The Baron had chosen a residence and had departed for hunting; therefore, the girl was fully free. But this is falsely stated by the advocate. For, in fact, between the time the abduction occurred, on June 15th, and the marriage, on October 5th, more than three months elapsed. Therefore, according to Bonifay, the Baron had only been with the abducted girl for ten days. But, on the contrary, it is clear that after the abduction, the Baron took the girl from Gallia to Helvetia, Germany, and Italy successively, and that the Baron's stepson, Marquet, upon learning of the matter, convened his stepson and Lazarina in Helvetia, at the end of July, in order to somehow settle the criminal act. And it is not enough: for the safe place, in which Lazarina is said to have

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been received,

[*Latin ed. p. 607*]

AQUEN. OR MASSILIEN. In the year 607, and after having remained there for three months, as Bonifay states, or for spiritual exercises, as the Baron claims, affirming that there was a convent of nuns there; however, it is testified that, apart from others, there was no such convent at that time, except for the parish priest of Saint Maurilius. But, apart from the internal contradiction between the testimonies of the Baron and Bonifay, there are also very strong testimonies, and first among these is that of Marquet, the Baron's advocate, who, having been present at that time to settle the matter, must have been fully aware of all the circumstances, and his testimony carries great weight. Furthermore, he stated: that there was never a young woman secluded in the monastery, which did not exist at Saint Maurilius. Then Ferdinand Maurel follows, who, together with the aforementioned Marquet and others, vividly describes the grievous servitude in which Lazarina found herself at that time. This strongly contradicts the alleged granting of freedom to the contrary, and it is entirely certain that there was a firm impediment at the time of the marriage. Nor has this been rectified later. For, with regard to the length of time, no addition of time has ever erased a certain and established declaration of the nullity of a marriage, according to the constant jurisprudence of the Holy Office, as Cosci De sep. th. I. 1 c. 8 n. 64 states. It is also objected that children may have been born, for Alexander III cautions in chapter 2, "Concerning legitimate children": "that children conceived before the sentence is pronounced are to be considered no less legitimate, and that they succeed to the paternal inheritance by hereditary right, and are maintained by the resources of the parents." And from another, it is clear that a marriage publicly declared null is not healed by the passage of time, nor is its nullity erased, as the Sacred Congregation has consistently held, and as is demonstrated by the resolution given in Rome, concerning Matrimonies, from the chapter on force and fear, Session 16, 1629; Gnesnen, January 19, 1754; Merbipolen, Matrimonies, June of the year 1859; and finally, in the most recent decree, of July 11, 1885, in which a marriage was declared null, having been celebrated before...

[*Latin ed. p. 608*]

608 AQUÉN. OR MASSILIEN. She was not properly married, although she had lived with a man for 14 years and two children were born to them. (1) However, in this case, two children were indeed born, and the separation, by order of the magistrate, did not occur until the year 1878, but it must be noted that: 1. They had already been living separate lives before this, and the first agreement for separation was made four years after the marriage; 2. Lazarina, who was 16 years old when she was abducted, being unaware

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of the abduction constituted an impediment that nullified the marriage, as testified by the notary Maurel, the banker Giraud, and others, and it is to be presumed from the woman's condition; 3. The relationship was always violent, and the man was very harsh and cruel towards the woman, as all the witnesses state; therefore, it cannot be supposed that anything was remedied regarding the defects of the marriage by the consent of the parties. But these points are noted for the sake of thoroughness; because, since the marriage was null due to a diriment and public impediment, namely the abduction, and also because of the lack of jurisdiction in the priest, the cohabitation and the consent of the parties, whatever it may have been, could not have any effect; but, according to the decree of Trident, a prior separation of the parties was required, and the consent had to be renewed before a legitimate priest and witnesses, as Barbosa clearly demonstrates in *De off. Episcopi*, allegation 32, number 149, and Reifenstuel, *appena. De disp. sup. imp. cum communi*. Since this was not done, the defender argues that the marriage in this case must necessarily be declared null.

OBSERVATIONS OF THE PROSECUTOR, OR THE PARTY SEEKING THE NULLIFICATION. On the other hand, the defender of the marriage, in the first part of his argument, explains in detail the irregularities that are present in the procedural records. And first, he observes that the interrogations of the parties and witnesses should be conducted in such a way that the depositions of each person remain secret until the publication of the process, in order to avoid any form of subornation, as commanded by the *Inst. S. C. C. cum communi* D D. But in this case (1) *Recole*, Vol. XVIII, 483.

[*Latin ed. p. 609*]

At Aquen, or Massilia, everything appears to have been revealed to the actress from the very beginning, and Lazarus was, it seems, shaken, first, second, third, and fourth times. Furthermore, in order to prevent the witnesses from being influenced, it was forbidden after the conclusion of the cause that the former witnesses be heard again, or that new witnesses be presented. However, the opposite occurred; for after the conclusion of the process, which took place on September 2nd and October 6th, 1887, the actress requested that twenty-one witnesses be heard again, and she obtained this from the benevolent court. This seems even more serious, because more witnesses had already been presented from the beginning, among whom were five nuns; and furthermore, in the new presentation of witnesses, the defender of the marriage began to introduce those who were not in favor of the marriage, against those whom Lazarina had chosen for her own cause. This defender, not only in this respect, but also in another, failed in his duty, when the witnesses Ferdinand Maurel and Emilia Gauthier, in his absence, were examined by the judge, and nevertheless he considered their depositions to be admissible, although this gravely offends against the

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Constitution *Dei Miseratione*. Indeed, not only did he consider them to be admissible, but he praised them as being perfectly in accordance with the truth; which is quite singular and abnormal in a defender of the marriage. But even more abnormal seems to be what he did against the witnesses who support the marriage, for example, he gently asked Aloysius Bonifay, "whether he would be willing to confirm in the presence of Lazarina what he had said under oath." While it is permissible for witnesses on the opposing side to be sworn, it is by no means permissible for their depositions to be used, as stated in Leuren, book 2, question 677, with the consensus. In addition, this circumstance, or the question asked of Aloysius Bonifay regarding the confirmation of his deposition before Lazarina, appears to have been carried out extrajudicially; for it was written on a separate sheet, signed only by the defender of the marriage, and signed by the aforementioned Bonifay several days after the interrogation; and yet it was recorded in the processual records. But even more serious occurred with the baron, whom the defender of the marriage requested, and obtained, to be compelled to testify before Lazarina, although this is condemned by the *Inst. S. C. C.*, which states: "Spouses must always be heard separately." *Asta*, Volume XXI, page 39.

[*Latin ed. p. 610*]

610 AQUEN. OR MASSILIENSIS. It must also be noted that this same defender disregards the testimonies of the Baron, observing that he "is more concerned with protecting his reputation in the face of danger than with revealing the truth." Furthermore, after having proposed several questions to be put to the Baron in practical application, "the defender deemed it unnecessary to question from the sixth to the tenth [interrogation]," and also "from the eleventh to the twelfth, and from the fifteenth to the sixteenth." This is not enough; for, contrary to Aloysius Bonifay, who had testified more in favor of the validity of the marriage, and who was honorably commended by his Ordinary, the witness Peter Marquet, a former employee of the Baron, when questioned, responds: "I believe, and I know, that Master Bonifay is fit for actions involving perjury." On the other hand, the same Peter Marquet, who had overseen the ecclesiastical marriage of the stepmother and Lazarina in Helvetia, and who, moreover, had falsely asserted at that time that he was the uncle of the same Lazarina, appears to be a liar and unworthy of trust. Nor does Lazarina herself, who is so highly praised by the opposing side, seem to be one to whom one could safely confide without fear of error; for, according to her character, she is said by the nun Maria of the Order of Saint Dominic to be a woman of lively disposition; and Aloysius Bonifay calls her a simulated person. Furthermore, when she was wealthy, she lacked nothing to gain the favor of witnesses, as, according to the testimony of the Bishop of Marseilles, she did with the nuns of Saint Joseph du Cabot, to whom she sent 300

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livres, writing: "To provide assistance to your Monastery; consider this gift as the beginning." In the second section of the defense, the defender attempts to show that Lazarina was not abducted, but rather fled willingly and, according to her own account, from the monastery. To support this, he first mentions what the actress herself recounted about her meeting with Alphrido in the garden before her flight. She states: "I found the Baron near the monastery, and he spoke to me kindly, urging me to follow him shortly and to listen to his words." And Lazarina, not fearing anything from such an unusual situation,

[*Latin ed. p. 611*]

AQJDEN. OR MARSEILLES. 611. Having heard this, the woman obeyed. Given these circumstances, everyone can easily understand how important it is to consider what is narrated elsewhere concerning Lazarina's aversion towards Alphridus, and her great fear. However, a question arises: why did Lazarina leave the enclosure on that day, at that hour, and proceed to the garden? Indeed, the laws of the monastery forbade this, and she was supposed to remain in the refectory. Lazarina responds: "Because the meal was not yet prepared, I walked around again." But this is false. For the nun Rigaud Maria of Saint John the Baptist, who served Lazarina, when questioned by the judge of Marseilles, replied: "It was already six o'clock in the evening; and because it was the hour of the meal, I brought the food; but Lazarina was missing." Furthermore, the nun Rigot Maria of Saint Dominic stated: "On June 15, 1865, in the evening, Lazarina Massol, returning from a walk with her custodian, entered the refectory, but almost immediately left again, hurrying towards the garden, contrary to her usual custom. I was in that part of the house which led to the garden at the moment the girl was escaping; and I remember seeing her leave the house with great haste." At that time, this event was not considered significant; it was only later, when it became known that the girl was missing, that I reflected on it. However, what is more significant is that the witness herself corrects her statement at this point; for although on September 2, 1887, she solemnly affirmed that she had left the refectory because the meal was not prepared, on April 7, 1888, when the third and final trial was closed, and all the documents were made known to the witness, Lazarina, urged on by her advocate, Albert Berand, underwent a final examination and spoke as follows, without hesitation: "The meal was being prepared; however, because I was suffering from a headache, I thought I would find something to eat; but I was mistaken; therefore, I was forced to go back to the garden to get some fresh air." But a new contradiction arises. For the nun Rigaud Maria of Saint John the Baptist, who served Lazarina, under oath, stated: "I placed the food on the table, and, having gone out to fetch something

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else, I returned."

[*Latin ed. p. 612*]

612 ACQUI. OR MARSEILLES. But Lazarina was not present, and she had not partaken of the food that had been brought for her. Furthermore, Lazarina confesses that, having barely left the house, she encountered Alphrid. Indeed, if the baron had foreseen that, on that day, at that hour, at that place, he would encounter Lazarina, then everything is clear, and mutual understanding and conspiracy are evident. If it were to be said that this happened by chance, then utterly absurd consequences would follow. For it would be inexplicable that Alphrid, at precisely the moment when everything suggested that he had lost his prey, having seen the nuns and girls being called to dinner, should put an end to his wandering, and enter the monastery, only to then, as it were, believe that his prey had appeared to him; and therefore, with inexplicable joy, he immediately crossed the wall of the garden and approached the gate of the enclosure. Regarding the possibility of communication between the students and outsiders, which the defense claimed was lacking against the patron, citing a passage from the deposition of the nun Maria Bigot; the defense notes that the words of the nun were wrongly reported by the scribes. The text actually reads: at that time, due to the incomplete ordination of our monastery, it was materially possible for relationships to be established between the girls being educated and outside individuals. And this is confirmed by four nuns who were questioned by the judge of Marseilles. But not only was it possible, but, the defense further argues, it actually and truly happened that Lazarina had meetings and conversations with the baron before her escape. And first of all, the defense notes that Emilia Gauthier, although a close friend of Lazarina, was not included among the witnesses in Acqui, unless the witnesses from Marseilles designated her as the intermediary of the aforementioned escape; but even then, although cited, she did not proceed to the examination unless Lazarina was present; and then, before the judge, and still upholding the sanctity of the sacrament, she said: one day I found Lazarina descending the stairs of the monastery; and she said to me, "Wait a little while"; and, after a short time, she handed me a package containing some old clothes for me.

[*Latin ed. p. 613*]

AT AQUEN. OR MASSILIENS. To the sister, whom she often showed kindness. With these words, she seems to distance herself from any appearance of mediation. However, at a later, less suspicious time, she acted differently. Concerning Philemon Baudouin, the parish vicar of Mazargues, when asked, "Do you know if, after this visit by Lazarine to the convent, there was any exchange of letters, messages, or any other signs between her and Alphridus?" he, after taking an oath of fidelity, responded: "I became

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more certain when Emilia Grauthier stated that she had received a letter from Lazarine, addressed directly to the Baroness d'Outhoorn, while she was visiting the convent on a Sunday to attend Mass." The nun Mistral Maria from the Most Holy Heart also testified to the vicar, swearing: "I heard that Emilia Grauthier brought a letter from the Baroness to Lazarine, while she was visiting the convent to attend Mass." And this nun testified even more clearly before the judge of Marseilles. However, the parish vicar of Mazargues reports: "The public opinion of the town of Mazargues is that Lazarine's departure was voluntary, due to an agreement with the Baron." The same thing is reported in the region of Marzagues, in the monastery of Les Cobol, according to what the nun Rigaud Maria from Saint John the Baptist stated. The nun Chapuis Maria of the Holy Family also testified before the chapter vicar of Lyons, under oath. Indeed, the nun Bigot Maria from Saint Dominic, based on her own knowledge, affirms: "I heard a double whistle, which certainly indicated a signal from within the convent, from the mountain overlooking the convent." It cannot be said, as the opposing side claims, that the minister Bonifay intimidated Emilia, and that this led the priest Baudouin, and one or both of the other nuns, into error. For it is clear that both the nuns and Baudouin are not speaking based on hearsay or the authority of Aloysius Bonifay, but based on public opinion and what was reported by Emilia Gauthier herself. Nor is it true that the opposing side objects...

[*Latin ed. p. 614*]

614 ACQUI. OR MARSEILLE. Concerning the nun Bigot Mary, whom she herself condemns for resisting, because, having initially stated that she had not been in the monastery of Saint Joseph of Cibol since the beginning of her testimony, she then adds, "I did see and hear." The defender responds that when the nun Bigot said that she had not been in the monastery of Saint Joseph of Cibol at that time, she meant that she had not been there permanently and as a member of the community. This point, indeed, would have been clarified if it had been questioned by the defender or by the judge of Acqui. Furthermore, there is no significant difference in the accounts regarding the letters between Alphrid and Lazarina. Since, in a matter so secret and ancient, which is reported through multiple accounts, it is not surprising that some details may not perfectly agree. But moreover, as the defender argues and seeks to demonstrate, these accounts do not contradict each other to such an extent that they cannot, either by considering a difference in the time of events, or by admitting other circumstances, be reconciled with each other. Moreover, there are other compelling indications that demonstrate the mutual consent of Lazarina and the Baron for the escape. The accuser claims that a dog, which guarded the monastery, should have completely prevented the Baron's nocturnal access. But the defender objects, saying that if such a fierce and vigilant guard was present,

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he would have certainly barked to reveal the Baron's daily entry, access, and violence. Furthermore, Lazarina herself testifies about her relations with Alphrid before the escape, as can be gathered from the testimonies of the nun Mary of Saint Dominic. It is also not true that Lazarina, from the beginning, firmly and unequivocally denied that she had ever consented to the escape; indeed, in subsequent interrogations, we found her to correct herself, when, being questioned about this point, she said: "Monsignor Bonifay says that I fabricated the story of the escape from the monastery. Certainly, I fabricated it even more; because after the escape, the Baron forced me to write letters, which he..."

[*Latin ed. p. 615*]

"AQUÉN. OR MASSILIEN. 615," he stated. Furthermore, this late correction does not stem from suspicions of impropriety. Rather, it is because the accused, after some time, namely during the interrogation of April 17, 1888, resorted to new arguments, adding that she had permitted and desired to be believed to be legitimately married in order to protect her honor and that of her children, and that Alphrid was a just husband to her. Moreover, the defender concludes that there is no better proof than the confession of the accused herself, according to De Luca, *De iudiciis*, section 23, numbers 1 and 26. Therefore, he believes that further arguments should be disregarded, such as those asserted by the Barons and Aloysius Bonifay, and he merely recalls that if Alphrid d'Outhoorn's testimony is not to be believed, then the testimony of the woman herself must also be discredited, since he, too, is found to be perverse and deceitful in this matter, especially when he was in Switzerland, attempting to arrange the marriage, and the uncle of Lazarina renounced his claim. Therefore, having denied the violence of the abduction, and since it is clearly established that Lazarina fled entirely of her own free will, in the third point of his argument, the defender presents legal precedents that demonstrate that the marriage between Lazarina and the Baron was validly contracted, free from any impediment. And here, after having expounded upon the Tridentine decree, as well as the opinions of several other Doctors on this matter, he finally declares that he subscribes to the conclusions reached in the work *Acta S. Sedis*, volume 1, page 62, which are highly praised by Ballerini in the notes to Griiry *De matrimonio*, number 858, and which, since they are based on the decrees of the Sacred Congregation and are written without any passion, rightly claim great authority. It is stated: "1. An abduction, which falls under the decree of the Council, is not to be considered as such, when preceding the abduction are agreements concerning the marriage. In this case, the man has the right to betroth the woman to himself, and the woman is bound to consent to the marriage; 2. Nor is this an abduction to be verified, if the man, without deceit, takes the woman away, since the agreements concerning the marriage could not be concluded due to the

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opposition of the parents; 3. Nor is an abduction to be verified, if it is not the man, but the woman, who takes the man away..."

[*Latin ed. p. 616*]

616 AQUÉN. OR MASSILIEN. 3. [He will cite, so that he may be taken away from her. In these two cases, it is rather the flight of the woman with the man, so that they may more freely enter into marriage, than a kidnapping; I V. e., on the contrary, a kidnapping or abduction occurs if a woman, contemplating a kidnapping through deceit and insidious solicitations, is taken away, so that she is then compelled, under the influence of the kidnapper, to consent to marriage." And Ballerini, in the cited passage, "For if a woman consents to the abduction, so that she may more freely enter into marriage, and uses this means of abduction to remove obstacles, it does not seem to be a kidnapping, but rather a mere flight, even though some injury may be inflicted upon dissenting parents." Furthermore, from what has been stated above, the defender believes that it has been sufficiently and abundantly demonstrated that Lazarina was taken away from the monastery, not by violence, but neither by that seduction which creates an impediment. But, proceeding further, the same defender argues that Lazarina had already attached herself to the Baron, and had pledged her faith to him, and therefore fled, in order to fulfill what she had promised, what she desired, what she wanted, contrary to her mother's command. Lazarina recounts that she had met a certain young man, Ducroz, and that she had sometimes, even while still in Marseilles, secretly fled to his parents' house; and her mother confirms this. However, the matter may have proceeded somewhat differently. For, although late that day, Lazarina's mother knew where her daughter was, nevertheless, we have that the proceedings were not against the family and the young man, Ducroz, but against the Baron d'Outboorn, with Alphrid being detained for five days, and then expelled from France, and Lazarina being taken by the very wife of the president of the tribunal to a place of refuge, du Cabot. And that is not all; for the nun, Maria Mistral, adds that she had heard that Lazarina had been sent to the monastery in order to prevent her relations with the Baron. And this is confirmed by Aloysius Bonifay. Furthermore, this point, from the Acts of the Holy See and the conclusions of Ballerini, is entirely maintained by the defender.

[*Latin ed. p. 617*]

MARSEILLE. 617. Moreover, even the patron himself concedes that, if a young woman is abducted against the will of her parents, it is not considered a true abduction if true betrothal has preceded it. However, it must be observed that, according to the cited writings of Ballerini, and others, it is not necessary to prove that true betrothal preceded the abduction in order to exclude the possibility of abduction; it is sufficient to demonstrate

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that marriage negotiations had taken place. Furthermore, it is established that both marriage negotiations and a betrothal had taken place between Lazarina and the baron prior to the abduction. This is confessed by Lazarina's mother, by Lazarina herself, and expressly by Alphridus, and indeed also by Bonifay. It is also known that, until her death, the actress's father, and sometimes even her mother, were entirely in favor of this marriage. However, the testimony of the priest Gignoux also supports this view; a testimony which is all the more credible because the honor of vicarious general, conferred upon him by the Bishop of Lausanne, has been bestowed upon him, and which the defender laments has not been judicially examined, especially since he was instructed on this matter by the aforementioned Prelate. Furthermore, the impediment of abduction persists as long as the abducted woman remains in the power of the abductor. Moreover, it is highly improbable that, during the four months that elapsed between the abduction and the marriage, Lazarina was always and everywhere prevented from any act of flight or resistance, especially during those times. Indeed, it is established from the confession of the aforementioned actress that, the day before the wedding, she was taken by Alphridus to the confessional; which seems incompatible with the assertion of the man's violence. It is also said that she spent several days in spiritual exercises. And although the patron objects, citing the canon of the parish priest Richori, who at that time was absent from the monastery of Saint Maur in the town of [unspecified], dedicated to the spiritual exercises of women, nevertheless, the probability of these exercises cannot be dismissed. Finally, it is established that, after the wedding, the couple went to Genoa, where they resided for several years, until the woman reached a more advanced age, as affirmed by the priest Gignoux; and that they then returned to their homeland, a marriage that, as they say, was civil.

[*Latin ed. p. 618*]

618 AQUÉN. OR MASSILIEN. A young man, intending to marry, did so even without the consent of his mother, who at that time was no longer of much use to the Lazarine community. But the mother, who had previously opposed it, consented, and the civil marriage ceremony was celebrated with great joy and festivity, as affirmed by the parish vicar Baudoin, and by Aloysius Bonifay. Furthermore, this does not merely overcome the obstacle of the abduction and the aversion felt towards the abductor, but also strengthens the opposite, namely, the firm and constant consent of the parties to the mutual bond of marriage. The defender of the sacrament believes that, with this obstacle removed, it is possible to obtain support for establishing the nullity of the desired marriage through clandestine means. Indeed, the marriage records of the parish of Saint Maur indicate that the marriage was duly celebrated. Furthermore, the parish books, according to Leuren, p. 1, q. De for. benef., provide full faith in the common

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record. Therefore, until the contrary is fully proven, this testimony must be maintained in the parish records, stating that all was complete, and that the marriage was duly and validly celebrated. It is not relevant that the marriage took place by delegation from the parish priest of Vibisc, who, although not apparently residing in the town of Saint Maur, nevertheless blessed the marriage. At that time, the general vicar of Massiliens, Guiol, was present in Switzerland; and nothing prevents us from supposing that, considering the particular circumstances, he delegated the parish priest of Vibisc with the power to further delegate the celebration of that marriage. Indeed, the priest Gignoux affirms that this actually happened. Therefore, the difficulty does not appear to be insurmountable, nor such as to invalidate the proceedings. Furthermore, regarding this point of clandestine action, there is no evidence; therefore, the defender believes it is futile to argue. With the foregoing noted, the purpose is to resolve the doubt as to whether the marriage is null. RESOLUTION. The Sacred Congregation, after discussion on February 18, 1889, decided to respond: "Regarding the abduction, it does not..."

[*Latin ed. p. 619*]

AT AQUEN. OR MASSILIEN. 619: "Si clandestinitas praesumitur, processum Episcopus Xjdusanenensis et Genevensis, cum facultate delegandi, incepturum est, ad instructiones praebendas Defensori vinculi matrimonii." Ex hoc colliguntur:

I. Interrogatorium partibus et testibus fieri debet, et depositiones singulorum secreta manere debent ante publicationem processi, ad evitandam subornationem; *Instructio S. C. Concilii Tridentini*.

II. Testes priores, aut novos, post conclusionem causae, non possunt audiri; neque testes umquam examini iudiciali supponi possunt, absente Defensore vinculi; *Constitutio Dei Miseratione... Coniugesque autem semper et seorsum audiri debent*.

III. Mulierem vi et dolo asportatam non potest duci in matrimonium ab raptore, quia Synodus Tridentina decernit, inter raptorem et raptam, nullum matrimonium posse consistere, donec mulier in loco tuto et libero constituta, illum in virum habere consenserit.

IV. Ex iure novo Tridentino, validitatem ratihabitionis non desumere ex libertate consensus, sed ex qualitate loci in quo mulier assentitur; ex quo sequitur, Tridentinum novum impedimentum induxisse, quia iure Decretalium, matrimonium fieri poterat, si puella verum consentisset, etsi posita in potestate raptoris.

V. Raptum, impedimentum gignens, verificari si mulier insidiis aut dolosis sollicitationibus abducatur, ab eo qui raptum agit, ut deinde in matrimonium consentire coacta sit sub raptoris influxu.

VI. Raptum non habetur, quoties praecesserint matrimoniales tractatus

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aut vera sponsalia; et vir sine dolo mulierem ex condicto abducat; hoc enim in casu melius appellaretur fuga mulieris cum viro.

VII. In themate impedimentum dirimens, ortum ex raptu, probatum dilucide non fuisse, cum tractatus matrimoniales et sponsalia praecesserint; et ideo, ex hoc capite, matrimonium in sua validitate permanet, donec probetur nullum clandestinitatis vitium.

[*Latin ed. p. 620*]

620 RIMINI. CONCERNING ABSOLUTION, THE REMISSION OF OBLIGATIONS, AND A TRANSACTION. January 19, 1889. By means of summary prayers. A SUMMARY OF THE FACTS. Peter Cherubini, of Rimini, at the close of the last century, had endowed a sum of six thousand scudi, for the purpose of establishing five ecclesiastical benefices with their respective spiritual obligations. In the present case, however, the matter pertains only to the third and fifth of these benefices. The third received an endowment of 1,200 scudi, with the obligation of a daily Mass celebrated from a stipend of ten solidi. Today, however, it is stated that a loss of 200 scudi has occurred from this endowment. The fifth benefice had an equal endowment and equal obligations; but, by an apostolic indult obtained, the number of Masses required annually was reduced to 50. Both, however, had come under the patronage of a certain Caietan Urban, when the so-called "suppression law" concerning benefices was being enacted by the civil government. And, taking advantage of this unjust situation, the patron, without the permission of the Church, redeemed both benefices, paying 1,056 scudi for the third, and 1,521:53 for the fifth. Subsequently, he did not fulfill the obligations, except for 25 Masses per year for each chaplaincy, which he managed at his own discretion. Now, Caietan Urban has died, leaving behind two sons and one daughter, who is already married, and a widow; who, as the petitioner, is now appealing to the Apostolic See to regularize all irregularities concerning the third and fifth chaplaincies, presenting receipts for 2,500 scudi from her own resources. However, she requests that the assets of both chaplaincies, which remain, be freed from all bonds and obligations, and be included in the inheritance of her children. The Bishop, consulted for information and his opinion, considered that the requested grace should be granted; and he added that if the petitioner were to die, her sons would probably do nothing further for the sake of their own conscience, and in favor of this pious cause.

[*Latin ed. p. 621*]

REVEREND FATHER. 624. A summary discussion has revealed that the proposed settlement appears to be more a matter of prudence than of law and justice. Indeed, according to justice, the heirs of Urban should return all profits, and furthermore, they should seek forgiveness for any partici-

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pation they had in the unjust usurpation, and for the interruption of the Masses. Only then should they be absolved of their legal obligations. However, it must be considered that, for the sake of achieving the best possible outcome, the very good itself might be lost. Furthermore, even if some profit remains to the heirs of Urban, and the Church must lose that profit; nevertheless, if these heirs are prepared to renounce the patronage, as the speaker promises, then the Church can receive the sum without that bond of servitude; and thus, the reduction in income seems to be compensated by the freedom granted. Considering these points, the question arises as to how the prayers should be answered. RESOLUTION. The Sacred Congregation, after review, on January 19, 1889, decided to respond as follows: In Fermo, maintaining the loss of the patronage, and for the sake of salvation, a sum of 2,500 livres should be paid, to be carefully and usefully invested by the Bishop for the respective pious causes; for the benefit of retaining the aforementioned assets and freely disposing of them, the Bishop should have the power to reduce the Masses to the proper level of income, upon the word given to the Most Reverend.

[*Latin ed. p. 622*]

622 APPENDIX V. In which are recounted more of the Decrees of the Holy Congregation of Rites. MODENA. In the year 1873, the Reverend Lord Joseph Maria Guidetti, along with the Guidi family, the present Archbishop of Modena, as delegate of the Apostolic See, established a second dignity within the Metropolitan Chapter, with the title of Praepositus, assigning to this new dignity a stall in the choir, and a third canon theologian, who previously held the second or fourth stall, with greater or lesser priority over the canon penitentiary, as is the case now, but without canonically suppressing the archdeaconry, which enjoyed the third stall in the choir. Indeed, there has never been a distinction within the Metropolitan Chapter of Modena between the presbyteral, diaconal, or subdiaconal orders; nevertheless, by virtue of ancient custom, neither the canon theologian nor the canon penitentiary, when one or the other held the second stall, provided assistance to the Archiepiscopal Cathedral. However, the establishment of this new dignity within the Chapter gave rise to a controversy, namely, whether the aforementioned assistance pertained to the new Praepositus or rather to the canon theologian; this controversy, from the beginning, remained suspended, since the new Praepositus, scarcely having accepted possession of his dignity, fell ill, and remained infirm until December 1878, when he died. However, with the present Praepositus having entered into possession of the dignity, the question between the canon theologian and the Chapter arose again. The Reverend Lord Augustine Pini, the present canon theologian, adhering to the disposition of the Ceremonial of Bishops, C.L.I., maintained that the assistance to the Episcopal Cathedral did not pertain to him, who held the third stall in the choir, but to the new Prae-

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positus, since, according to the aforementioned Ceremonial, he sits immediately behind the first dignity. The Chapter, on the contrary, endeavored with all its might to affirm that this assistance pertained to the canon theologian, because he holds the third stall, asserting that the custom of which we spoke above, by virtue of which, before, dispensation was made from that very assistance because he held the second seat in the choir, still held, and indeed, perhaps even more so, since the Most Reverend Archbishop seems to have confirmed it in his decree of establishment of this dignity.

[*Latin ed. p. 623*]

Having examined the nature and properties [of the matter], he asserts that the conditions of the dignity in question should be derived either from the actual state of the Chapter, or from the law itself, or from custom. To prevent the controversy from proceeding further, the same Canon and Theologian, with the advice of the Most Reverend Archbishop of Mutina, proposed the following question to the Sacred Congregation of Rites, seeking a suitable solution from it, namely: Whether the innovation introduced in the Chapter of Mutina should be maintained in the future in the *Caeremoniale Episcoporum*, or whether the ancient custom, as mentioned above, regarding the assistance to be rendered to the Episcopal See should be observed. And the aforementioned Sacred Congregation, after mature deliberation and having heard the opinion of another of the Masters of the Apostolic Ceremonies, deemed it fitting to respond in writing to the Secretary regarding the proposed question: That, in view of the reason for the innovation, the *Caeremoniale Episcoporum* should be observed entirely. And thus it responded, and it ordered that it be observed. January 16, 1880.

AURELIANEN. The Most Reverend Bishop of Aurelianen humbly requested the following question to be declared by the Sacred Congregation of Rites: Whether it is permissible to observe the custom of reading or singing the Mass of the Innocents (Missus est) on the day indicated in the *Missale Romanum*, page 623, or the votive Mass of the Angels? And the aforementioned Sacred Congregation, after consulting with the Secretary of the Sacred Congregation of Rites, and having heard the opinion of one of the Consultors of the same Sacred Congregation, after considering all matters, deemed it fitting to declare as follows: That the custom should be observed; but the votive Mass of the Angels should be read or sung only on days permitted by the Rubrics. And thus it declared and responded. January 30, 1880.

MINDONIEN. When the Most Reverend Bishop of Mindonien inquired whether it was permissible to use a glass pyx to safeguard and administer the Holy Sacrament in wooded areas and in places where thieves, captivated by a love of metal, commit the horrendous sacrilege of stealing pyxes; the Sacred Congregation responded: No. January 30, 1880.

YIVARIEN. The current Bishop of Yivarien, during the Sacred Visitation

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of his Diocese, found many altars whose sepulcher is carefully sealed with cement, but without any remaining trace of the episcopal seal. Of these altars, some were consecrated not long ago, and it is certain that the sepulcher has not been opened; while others have been sealed for many years.

[*Latin ed. p. 624*]

624. Concerning the Congregation of Clerics of the Mission of St. Vincent de Paul, which Seminary is divided into two parts, namely, the Major and the Minor. In the Major Seminary, only Priests of the aforementioned Congregation teach and administer; in the Minor Seminary, the same administration is entrusted to them, but more Diocesan Priests labor for the instruction of the youth. Since the Clerics of this Congregation of Mission have an office distinct from that of the Diocesan clergy, the following doubt arose: Whether in the oratory, or church of the aforementioned Diocesan Seminary, the Calendar of the Cathedral Church, or rather, the Calendar of the Congregation of Mission, ought to be observed? This very doubt was humbly proposed to the Sacred Congregation of Rites by the Most Reverend Bishop. The Sacred Congregation of Rites, after due consideration of the doubt, with reference to the written opinion of the undersigned Secretary, decided to respond as follows: Affirmatively to the first part; Negatively to the second. And thus it responded, and declared. On March 20, 1880.

APPENDIX: Concerning matters about which there is not the same certainty, but only great probability. Concerned by this irregularity, the Most Reverend Orator, wishing that all things be done in proper order, humbly proposed the following doubts to the Sacred Congregation of Rites:

Doubt I. Whether portable altars should be prohibited because of the absence of the episcopal seal, while the tomb and relics remain intact?

Doubt II. And, if so, whether the episcopal seal can and should be affixed to the tomb?

Doubt III. Whether the same portable altars should be prohibited when there is not full certainty, but only great probability, that the tomb has not been desecrated and must be re-consecrated?

The Sacred Congregation of Rites, having heard the opinion of its Most Reverend Assessor, and after due consideration of the proposed doubts, with reference to the written opinion of the undersigned Secretary, decided to respond as follows:

To I. Affirmatively, unless it is known to have been properly consecrated.

To II. It can be affixed.

To III. As provided in the first. And thus it responded, and declared. On February 28, 1880.

MARIANEN. The Most Reverend Bishop of Mariana reported to the Sacred Congregation of Rites that his Diocesan Seminary had been entrusted

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to the care of the Order of St. John of God.

ORDER OF ST. JOHN OF GOD. The Reverend Father John Maria Alfieri, General of the Order of St. John of God, humbly requested a solution from the Sacred Congregation of Rites concerning the following doubt: Whether Regular Canons, having their own feasts, but according to the rule...

[*Latin ed. p. 625*]

APPENDIX V. Concerning the Breviaries of Rome, which conform to the calendars of the dioceses of Hispania, it is asked whether they are also obliged to conform to the Octaves of the feasts of those dioceses, when no decree exists to the contrary. And the Sacred Congregation, after considering the following question presented by the undersigned Secretary, decided that such a doubt should be answered as follows: "No, and the decrees concerning this matter were issued in Rome on September 10, 1741, and in Florence on June 14, 1843." And thus it declared and responded. On March 20, 1880, in SANCTI DEODATI. The Most Reverend Monsignor Maria Camulus Albertus de Briey, Bishop of Saint-Dié, proposed the following question to the Sacred Congregation of Rites: "Is it permissible to celebrate a funeral Mass in the presence of the body on feast days of the first class, when, by Apostolic Indult of April 9, 1802, concerning the reduction of feasts in Gallia, the solemnity of the feast has been transferred to the following Sunday, and would this transfer impede the celebration of the Mass on that Sunday?" The Sacred Congregation, after a careful vote of one of the Masters of the Apostolic Ceremonies, and with the reference of the undersigned Secretary, decided to declare as follows: "No, and a decree concerning this matter shall be issued in Namur on March 23, 1835, in response to question 14." And thus it declared and responded. On March 20, 1880. (1) NAMURCEN. Question 14. In Belgium, as in Gallia, due to the reduction of feasts enacted by the authority of the Most Holy Pope Pius VII, there are many feasts whose solemnity is transferred to the nearest Sunday. Consequently, many difficulties have arisen in practice, and for their resolution, the following is asked: 1. Must the Mass be sung in the manner of a votive Mass with a single Collect on a Sunday, when the feast, whose solemnity is to be transferred, falls on that very Sunday, e.g., last year, the feast of Saints Peter and Paul? 2. Does the commemoration of all the Apostles, which is to be performed on the solemnity of Saints Peter and Paul, take place on the day of the feast itself, or on the Sunday to which the solemnity is transferred, or on both? 3. The same question is asked regarding parishes whose patron is Saint Stephen, concerning the commemoration of all the Martyrs on the feast day prescribed for him? 4. According to the instruction given in Paris on December 11, 1806, by the Cardinal Legate, only the solemnity of the aforementioned feasts is transferred to the following Sunday, on which the Office, which was previously recited by the clergy both publicly and privately, and the Mass, according to the rubrics

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or the customary order, are sung. However, is the Vespers of that Sunday also to be sung solemnly, or with pomp, while observing the semi-double rite due to the transferred solemnity? 5. In the reduction of feasts, the Most Holy Pope Pius VII wished to add the following law: "On feast days, and on the vigils preceding those feasts which are suppressed, in all churches, nothing shall be changed in the usual order and rite of the Divine Office and of the sacred ceremonies, but all things shall be performed exactly as they have been hitherto."

[*Latin ed. p. 626*]

626 APPENDIX V. CONCERNING THE APOSTOLIC DELEGATION OF PERU. The Sacrament, which, on the occasion of the Forty Hours Devotion, or for some other reason, has been exposed for public veneration by the Most Reverend Lord Marius Mocenni, Archbishop of Heliopolis, and the Apostolic Delegate of Peru, ought to be returned to the tabernacle, and the clergy should, in accordance with the observance of the Liturgy, sing the hymn "Tantum Ergo" until the end, with the verses, and then, observing what is prescribed in the Roman Ritual, with the ostensorium. On April 9, 1802.

> "Therefore, in feasts, the solemnity of which is deferred to the next Sunday, is the public Office, both morning and evening, to be performed as before the reduction?

6. Is it permissible to sing the Mass of Saint Bequie, in the presence of the Body, on Sundays to which the solemnity of those feasts of the first class is transferred? Is this permissible on the very day of the feast?

7. Do the indulgences granted for feasts of the first class, the solemnity of which is transferred as above, apply to the very day of the solemnity, or to the feast day itself?

8. For some feasts, the solemnity of which is deferred to the following Sunday, the celebration of the Sacred Mysteries is forbidden in domestic chapels; is this prohibition to be understood as applying to the day of the feast, or to the Sunday on which the solemnity is observed?

9. If the solemnity transferred, e.g., of the feast of Saints Peter and Paul, and the patronal feast of the diocese or parish, falls on the same Sunday, should the more important feast be celebrated, or should the other be transferred to the same Sunday, and if that Sunday is impeded, should it be transferred to another day? If the Sunday to which, according to the aforementioned Indult, the patronal feast is to be transferred is the proper day of Saint John the Baptist, should the patronal feast be transferred to the impeded Sunday, since the feast of Saint John is of the same rank and cannot be transferred, lest a double solemnity of the first class be celebrated on the same day in the same church?

The following response was given by the Most Eminent Cardinal

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Caprara, who at the time was the Legate *a latere*, in answer to the questions proposed by the Bishop of Cambia.

1. "If the solemnity transferred, whether of the anniversary of the dedication or of the patron, falls on the same Sunday, the more important solemnity, namely that of the dedication, should be celebrated; the less important, that is, the feast of the patron, should be transferred to the first Sunday that is not impeded, according to the rubrics."

2. "If the Sunday to which, according to the Indult for the reduction of feasts of April 9, 1802, the patronal solemnity is to be transferred, is the proper day of Saint John the Baptist, then the patronal solemnity should be transferred to the first Sunday that is not impeded, according to the rubrics, lest (since the feast of Saint John the Baptist is of the same rank and cannot be transferred) a double solemnity of the first class be celebrated on the same day in the same church."

Is the aforementioned response authentic, and is it to be applied to similar cases?

To question 14:

1. Negative.

2. On the day of the feast.

3. As to the next [Sunday].

4. It is possible.

5. Affirmative.

6. The rubric should be observed as before the reduction of feasts, and should also be extended to the Sunday.

7. Refer to the Sacred Congregation of Indulgences.

8. On the day of the feast.

9. Affirmative.

10. According to the instruction given by the Cardinal Legate *a latere* to the Bishop of Cambia.

[*Latin ed. p. 627*]

Whether the sign of the Cross should be made over the people? Furthermore, the Sacred Congregation of Rites, after hearing the report of the undersigned Secretary, and after hearing the Most Reverend Assessor of the same Sacred Congregation, decided that the following should be answered: Affirmative, and reference is made to the Decrees of Utrecht, of July 11, 1857, and to those of the Order of Capuchins in the Province of Switzerland, of May 23, 1835, and of Camerino, of March 26, 1859. And thus it responded and wrote. On April 15, 1880. AQUEN. The General Vicar of the Diocese of Aachen humbly requested an authentic response from the Sacred Congregation of Rites regarding the following doubt: Whether a Church, which has obtained an Indult from the Apostolic See to sing the

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Mass of Requiem twice or three times a week, can still enjoy this Indult if, in the same week, the same number of Vespers and Compline occur? And the Sacred Congregation responded: Affirmative. On April 15, 1880. VIGLEVANEN. The Most Reverend Lord Peter Joseph de Gaudenzi, Bishop of Vigievanen, desiring above all that the clergy of his entrusted Diocese may properly conform to all that is prescribed by the rubrics and the decrees of the Sacred Council in performing both the Divine Offices and all ecclesiastical functions, humbly proposed the following doubts to the Sacred Congregation of Rites for appropriate resolution: Doubt I. According to the Decrees and the Roman Ritual, when administering Holy Communion outside of Mass, a stole of the color corresponding to the Office of the day must always be used. The question is whether the pouch that the priest carries before his chest should always be of the same color as the stole, as seems more appropriate, or whether, in any case, a white pouch can be used, according to the custom of many churches, even if the stole is of a different color? Doubt II. The question is whether the prayer "Deus qui nobis sub Sacramento" recited by the priest in the church, or when distributing Holy Communion outside of Mass, or after having given the sick the Viaticum, should end with the short conclusion "Qui vivis et regnas in Saecula Saeculorum," or with the longer "Qui vivis et regnas cum Deo Patre etc."? Doubt III. The question is whether, on the feast of Saint Peter the Martyr, on April 29, when the same feast is transferred after Easter, the Homily of the Office should be recited, in the first place after the Gospel, "Si quis venit," according to the Decree of March 17, 1736, in Ein-

[*Latin ed. p. 628*]

APPENDIX. Regarding the Mass, whether it should be recited with or without the "In virtute" formula, or according to the Missal of Rome published in 1862 by the Congregation of Propaganda, the following questions arise: The Mass of Saint-Denis still exists, but because of the change in circumstances, the benefice attached to it was transferred a few years ago to a parish.

Question IV. In the Mass on a Feria [weekday], and on the Feast of the Lord, after the intonation of "Gloria in excelsis," are the organ and bells to be played, as is customary, until Saturday, according to the rubrics? Is it permissible to prolong the sound of the organ until the end of the hymn "Angelicus," so that the choir may follow this hymn with organ music interspersed, until the end, as is customary, or is the entire hymn "Angelicus" to be sung entirely by the choir, without any intermingling of the sound of the organ, as is customary?

Question V. In the Viglevan province, there were formerly two parish churches: one under the title of Saint Christopher, and the other under the title of Saint-Denis. The first of these churches was destroyed and leveled; the benefice for the care of souls was transferred from that church to the

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new parish church under the title of Saint Peter. Therefore, the title of the benefice is now designated as Saint Christopher, while the title of the parish church is Saint Peter. The other church, under the title of Saint-Denis, still exists.

1. Is the parish priest of Saint Peter obliged to celebrate both feasts [the feast of Saint Christopher and the feast of Saint Peter] according to the rites appropriate to each feast, that is, according to the proper rites of the parish church under the title of Saint Peter, or is he obliged to celebrate only the feast of Saint Christopher according to the rite of the Double of the First Class with an octave, while celebrating the feast of Saint-Denis according to the rite described in the diocesan calendar?

2. Is the parish priest of Saint Francis obliged to celebrate both feasts [the feast of Saint Christopher and the feast of Saint Peter] according to the aforementioned rite, that is, according to the rite of the Double of the First Class with an octave for the feast of Saint Francis, while celebrating the feast of Saint-Denis according to the same rite as described in the diocesan calendar?

[*Latin ed. p. 629*]

Question VI. According to the Decree of February 6, 1857, in Nortantonien, article 1, concerning Suffrages of the Saints, in addition to the other prescribed commemorations, a commemoration of the titular saint of the church must also be instituted by those who belong to the same parish, provided that the church has been consecrated. Hence, the following questions arise: 1° Whether this resolution is also to be extended to other churches, so that even when parish churches are not consecrated but only blessed, no commemoration of the respective titular saint can be instituted in the Suffrages of the Saints by the pastors and others strictly devoted to the service of those same churches? And 2° To the extent that the affirmative answer is given, whether the other obligation, which under penalty of not fulfilling the Office, is incumbent upon the pastors and others of the parish, to celebrate, according to the rite of a Double of the First Class with an Octave, both the feast of the titular saint of their parish church, even if it is only blessed, and the anniversary of its dedication, if it is consecrated, remains in force?

Question VII. In the territory of Piedmont, Saint Mauritius, the Martyr of Thebes, is venerated as the principal patron of the entire kingdom. His feast, according to the Apostolic Letters of Pope Pius VI, dated May 27, 1876, in place of September 22, as previously celebrated, is now celebrated on January 15, according to the rite of a Double of the First Class with an Octave. Furthermore, according to decrees issued on this matter, in Oxv. 629, in addition to the commemoration of the principal patron of the diocese, a commemoration of the principal patron of the place must also be instituted in the Suffrages of the Saints. Hence, the question arises: whether,

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in places in that territory that do not have a special or particular patron, a commemoration of Saint Mauritius, the Martyr, must also be made in the common commemorations for the Suffrages of the Saints, as the principal patron of the entire kingdom?

Question VIII. According to decrees issued on several occasions, the right to carry the Blessed Sacrament in processions customarily held after the solemn Mass, either on the feast of and the Octave of the Most Holy Body and Blood of Christ, or on any third Sunday of any month, pertains only to the celebrant, excluding all others. Some maintain that this must be observed whenever a procession with the Blessed Sacrament immediately follows the solemn Mass, but they say that the decrees do not extend to the case in which some interpolation occurs between the solemn Mass and the procession, or between this last and Vespers, due to a gathering or the recitation of the Canonical Hours. Hence, the question arises: whether, when some of the Canonical Hours, for example, Sext and None, are recited between the Mass and the procession, or when the Compline is recited between Vespers and the procession, another canon or priest, different from the celebrant, may put on the alba in the sacristy.

[*Latin ed. p. 630*]

630 APPENDIX V. concerning the celebration of the Procession of the Most Holy Sacrament?

Doubt IX. In the city of Vigevano, there exist two parishes besides the Cathedral. In the first of these, dedicated to Saint Peter the Martyr, there is an ancient custom whereby, during the evening hours, prayers are recited or sung by the clergy, as prescribed by the Ritual, over the bodies of the deceased, up to the final prayer, "Fac quaesumus Domine." This practice continues even when the bodies of the deceased are not carried away for burial, but are kept in a suitable place near the church, so that the Office for the Dead with a sung Mass may be celebrated in their behalf the following morning, with the body present. After the Mass, the body is then taken to the cemetery without repeating the funeral prayers. In the other parish, dedicated to Saint Francis, the Office for the Dead with a sung Mass is celebrated in the presence of the body the evening before it is brought to the church. In the evening preceding, the funeral prayers are sung up to the prayer "Non intres," and the remaining prayers are completed the following morning after the sung Mass for the Dead.

The question is asked: Can this custom be maintained in each parish, or is the custom existing in the parish of Saint Peter the Martyr to be considered an abuse that should be condemned and eliminated?

Doubt X. It often happens in certain regions that, on the occasion of a funeral, the body is delivered for burial in the evening, and then a sung Mass for the Dead is celebrated the following morning, as if on the day of death, for the deceased who was buried the previous evening. Previously,

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the Sacred Congregation of Rites was asked whether a sung Mass could be celebrated for the soul of the deceased on the same days, in which the body is present, on July 7, 1816, in Tuden, at number 43. The response was: "Affirmatively, provided it is not a Double, or a Double of the Second Class, or a feast of precept." Again, the clergy of the city of Turin asked whether the Mass could be sung in this case, except on days when sung Masses for the Dead are prohibited, in the absence of the body, on April 11, 1840.

Although these responses seem sufficiently clear, nevertheless, since not all doubts can be resolved from these resolutions, especially if account is taken of the Decree of September 23, 1837, in Sutri, in which it was declared that this Mass for the Dead could be sung on a Feria of the greater week; hence, in order to eliminate questions and the variety of opinions that prevent the attainment of the desired uniformity, the following is asked:

I. Can a sung Mass for the Dead be celebrated in the morning of the following day for a deceased person who died the previous evening for a reasonable cause, as if on the day of death, in all parishes, whether Double or Minor?

[*Latin ed. p. 631*]

In churches, during the Vigils of Epiphany, Pentecost, and the Nativity of the Lord, on Feria IV (Ash Wednesday), during the first three days of the Greater Week, and during privileged Octaves, except only on Sundays and on days of precept, the first and second classes of religious may use the Little Office, except during the second three days of the Greater Week, on the Octave of Epiphany, and on the feast of the Most Holy Body of Christ, and on days when the Forty Hours Devotion is being held.

Question 11. According to the Decree of August 7, 1694, as reported by Spiridione Fabii, tertiaries of Saint Francis living in the world may use the Breviary of the Order of Friars Minor, and conform to its calendar. However, since some doubts have arisen from this resolution, the following is asked: 1. Can a secular priest assigned to the Third Order of Saint Francis, who also has the care of souls, but is not in any way bound to the choir, conform on any day and at his own discretion to the calendar published for use by the Brothers of the Order of Friars Minor Observant of Saint Francis, either regarding the Office and the Mass, or regarding only one of these, always, however, except for any particular obligations that may arise due to the occurrence of the Principal Patron of the diocese, or the titular saint, or the dedication of the church? 2. And, in the affirmative, if, for example, in the calendar of the Order of Saint Francis, some Office is already recited, can he, in this case, conform to the diocesan calendar and recite the Office again as it occurs there?

Question 12. When a priest attends the first Mass of a newly ordained priest, should he wear the stole from the beginning of the Mass until the end, as some do, or should he only put it on from the beginning of the

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Canon until the Consummation?

And the Sacred Congregation, after considering the report of the undersigned Secretary, and after hearing the opinion of another of the Masters of the Sacred Ceremonies, after carefully considering the proposed questions, decided to respond as follows:

To Question 1: It is fitting that the burse be of the same color as the stole worn by the priest.

To Question 2: The prayer "Deus qui nobis..." should be recited as in the latest edition of the Roman Ritual of the year 1874.

To Question 3: Negatively to the first part; affirmatively to the second part.

To Question 4: The custom should be observed.

To Question 5: Regarding the first question, negatively to the first part, affirmatively to the second part. Regarding the second, he should celebrate the feast of Saint Francis in the church of Saint Francis; the feast of Saint Denis in the chapel of Saint Denis.

[*Latin ed. p. 632*]

632 APPENDIX Ad VI. Ad 1: It suffices that they be blessed; ad 2: Affirmative concerning the titular feast, negative concerning the anniversary of the dedication of a church which is not consecrated. Ad VII: Affirmative in this case. Ad VIII: Negative, unless it is a Bishop or another dignity. Ad IX: The prescription of the Roman Ritual must be observed. Ad X: Concerning the first, affirmative; concerning the second, as provided in the first. Ad XI. Ad I: Affirmative, but concerning the Office and the Mass; ad II: Affirmative. Ad XII: The custom must be observed. And thus he wrote, and commanded it to be observed. June 1st, 1880. BARCELONA. The religious community of the Monastery of St. Peter, commonly known as "de las Puellas," in the city of Barcelona, having obtained apostolic permission, sold the building where they previously resided, in order to construct a new one in another location, where they now reside. However, reserving the right of ownership of the old church, they ceded its use to the parish priest. After these explanations, the Superioress of the aforementioned religious community humbly requested a resolution from the Sacred Congregation of Rites regarding the following doubt: Whether the aforementioned religious community, by reason of the right of ownership they have in the church itself, is obligated to perform the Office of Dedication of the same?

Response: The Sacred Congregation, after careful consideration, with the undersigned Secretary present, judged that the following should be answered: No, they are not obligated. And thus they responded, and decreed. August 7th, 1880. LUCIEN. The Master of Sacred Ceremonies of the Cathedral Church of Lucien, with the consent of his Most Reverend Bishop, humbly requested a declaration from the Sacred Congregation of

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Rites regarding the following doubt: On those days on which commemorations are excluded by reason of privileged Vigils or solemn feasts, namely the titular feast and the feast of the patron, as well as the Circumcision, Epiphany, Easter, Ascension, Pentecost, the Most Holy Heart of Jesus, and other feasts of the Lord, is the commemoration of the Most Holy Sacrament to be made by reason of its exposition? And the Sacred Congregation, with the undersigned Secretary present, after hearing the opinion of another of the Masters of Apostolic Ceremonies, responded as follows: Affirmative in solemn Masses, negative in private Masses. And thus they declared, and wrote. August 7th, 1880. SEVILLE. To the Most Illustrious and Reverend Sir, as a brother, the Most Reverend General Vicar of this Archdiocese has explained.

[*Latin ed. p. 633*]

IX. To this Sacred Congregation of Rites, it has been reported that an ancient custom has been observed in the Metropolitan Church of Hispalensis, namely, the tradition of delivering the key of the monument, or reliquary, where, on the Feast of Our Lord, the Most Holy Sacrament of the Eucharist is reserved, to the Prefect or Governor of the civil province, so that he may publicly carry it hanging around his neck until the Feast of the Preparation (Friday). And this singular honor, which is usually bestowed upon such dignitaries, is based on the universal patronage of the King of the Catholics, whose person and authority they represent in all the churches of the Spanish kingdoms. Indeed, when the Very Reverend General himself arrived, this custom of the Sacred Congregation was entirely contrary to the general decrees of this Congregation, in order to remove any conflict between civil and ecclesiastical power, he humbly requested a special dispensation in this case, at least until the Royal Patronage, granted and recognized by the Apostolic See, is established. The Sacred Congregation, after carefully considering the matter, as reported by the undersigned Secretary, decided as follows in this case: It may be tolerated that, in addition to the real key of the monument or reliquary, which must be kept entirely by the priest, another symbolic key be delivered to the aforementioned Governor of the civil province.

August 7, 1880. 633 To the Most Illustrious and Reverend Lord, as to a Brother, the Archbishop of Hispalensis.

AUXIMANA.

The Reverend Pius Quatrini, Canon and Coadjutor of the illustrious Collegiate Church of St. Donatus in the town of Montis Fani, in the Diocese of Auximana, humbly presented himself to the Sacred Congregation of Rites, stating that, when only three Canons, besides the Beneficiaries, were present for the solemn celebration of Vespers, he was forbidden by a certain Canon from singing the fourth antiphon, which had already been intoned to him by the Singer. He himself, in order to avoid any disputes arising

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from the singing of the antiphon, refrained from singing it, and allowed the more deserving Canons to take his place; however, when he could not persuade the same Canon that this duty, even if four Canons are present, does not belong to the Coadjutor, if the Coadjutor is present at Vespers and intones the antiphon, he humbly requested the same Sacred Congregation, with the consent of his Reverend Bishop, to resolve the following doubt: Whether, if four Canons are lacking who should begin the antiphons of Vespers, the Canon and Coadjutor has the right to sing the antiphon, even if the Coadjutor is present with the choir and intones the antiphon according to the order?

The Sacred Congregation of Rites, after deliberation, -

[*Latin ed. p. 634*]

634 APPENDIX V. After having heard the opinion of another of the Masters of the Apostolic Ceremonies, and after the opinion of the Reverend Assessor of the aforementioned Sacred Congregation having been heard, it was deemed fitting to respond in writing to the report of the undersigned Secretary: Affirmative. And thus it was responded. August 7, 1880. AUXITANA. Reverend Father Solomon, honorary canon of the Metropolitan Church of Auch, with the consent of his Reverend Archbishop, humbly requested a declaration from the Sacred Congregation of Rites regarding the following doubt: Whether a Tabernacle of the Most Holy Sacrament, made of silver, gold, or other precious material, is, by that very fact, exempt from the general obligation of covering it with Gonopea? The aforementioned Sacred Congregation, having heard the opinion of another of the Masters of the Apostolic Ceremonies, deemed it fitting to respond in writing to the report of the undersigned Secretary as follows: The prescription of the Roman Ritual must be observed. And thus it was responded. August 7, 1880. SANCTI IACOBI DE CHILE. In the Metropolitan Church of Saint James of Chile, it has been the custom from time immemorial to recite the lesser Hours before the Solemn or Conventual Mass on those days in which a sermon or procession takes place. The current Archdeacon of the aforementioned Church, doubting whether such a custom can lawfully continue, requested a suitable declaration from the Sacred Congregation of Rites. The aforementioned Sacred Congregation, having heard the opinion of another of the Masters of the Apostolic Ceremonies, deemed it fitting to declare, in the report of the undersigned Secretary, as follows: Negative, whenever a sermon is to be given; Affirmative, if a procession is to be held with the Most Holy Eucharist. And thus it was declared, and thus it was responded. August 7, 1880. AMALPHITANA. Since, by Decree of the Sacred Congregation of Rites of June 26, 1821, the Anniversary of the Dedication of all churches, except the Cathedral, is observed annually in the Archdioceses on the Sunday that occurs last in the month of October, the Reverend Archbishop of the same Archdioceses inquired of the aforementioned Sa-

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cred Congregation: Whether such a feast should be celebrated in all the churches of his Archdiocese, or only in those that are dedicated, except for the Cathedral, whose Anniversary of Dedication is celebrated on the first Sunday of September? The aforementioned Sacred Congregation, in relation to the report of the undersigned Secretary, and having heard the opinion of another of the Masters of the Apostolic Ceremonies in this case, declared: Affirmative, regarding the first part;

[*Latin ed. p. 635*]

3IX Regarding the second matter. And thus, he declared and wrote. On August 20, 1880, in BRIXIEN. The Reverend Father, A. T., informed this Sacred Congregation of Rites that in certain churches within the Diocese of Brixien, certain invocations, similar to litanies, are sung before the Most Holy Eucharist on certain established days. However, doubting whether such a practice could and should be tolerated, A. T. sought an authentic declaration from the same Sacred Congregation regarding this matter. Therefore, the Sacred Congregation declares to A. T., through these present letters, that the aforementioned invocations, similar to litanies, cannot be lawfully recited in churches, especially before the Most Holy Sacrament, since they entirely lack the approval of the Holy See. On August 24, 1880, in BRIOCEN, the Vicar General of the Bishop of Briocen. The following doubts are humbly presented to the Sacred Congregation of Rites: Doubt I. The rubric in the Roman Ritual, concerning the Order of Funerals, regarding the blessing of a tomb, reads as follows: "But when he arrives at the tomb, if it is not blessed, the priest blesses it, saying this prayer..." Question 1. Should the priest perform this blessing even if the tomb is located in a cemetery that has already been blessed? Thus, is the blessing of the tomb required in all funerals of the faithful, at least of those who have attained the use of reason, except only in the case of a tomb that has already been blessed? 2° Since the formula for the blessing of a tomb, as given in the Roman Ritual, speaks only of the deceased who, before their death, may have been able to sin, and since elsewhere the same Ritual does not prescribe a blessing of tombs for infants, nor does it provide a special formula for the blessing of such a tomb, the question is: What about the blessing of the tomb of an infant? Should it be omitted in every case, whether the infant is buried in a cemetery that has already been blessed, or in a cemetery that has not been previously blessed? And if it should not be omitted, how should such a blessing be performed? Doubt II. In both the Ritual and the Missal, a blessing for priestly vestments in general is found, but not for individual items. Therefore, the question is: When a priest, having the power to bless, wishes to bless only one item, for example, a *cingulum*, should the said priest use the aforementioned general formula, changing

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the plural number to the singular number?

[*Latin ed. p. 636*]

636 APPENDIX V. If a priest has the ability to use the formula of blessing for vestments, but is not permitted to do so in the species required by the Pontifical, what should be thought regarding the blessing of one or several sacerdotal vestments performed by the priest himself, if he uses the formula of blessing in the species excerpt from the Roman Pontifical? Should the blessing be considered valid in this case?

Doubt III. Authors teach that the *palla* should be blessed along with the *corporal*, and no other way. Therefore, the question arises: can the *palla* be blessed separately from the *corporal*, for example, when the *corporal* is already blessed, and a new *palla*, or new *pallae*, are present without a *corporal* to be blessed?

2. When one *palla* is blessed along with a single *corporal*, is it necessary to recite the prescribed prayers in the singular number, as if only one *corporal* were present to be blessed?

3. Finally, if several *pallae* are present to be blessed along with only one *corporal*, or several *corporals* without or along with one or more *pallae*, is it necessary for the minister of blessing to use the plural number?

Doubt IV. In the Roman Ritual, after the first prayer for blessing a new cross, another prayer is added under the heading "Another Prayer for the Same." The question arises:

1. Can this second prayer be omitted by the priest performing the blessing of one or more small crosses, so that the aforementioned first prayer is used to sprinkle the aforementioned cross or crosses with blessed water, omitting the second prayer, and the adoration mentioned in the following rubric?

2. When a cross, especially a small one with the image of the Most Holy Crucifix, is to be blessed, should the formula for blessing a new cross be used, or rather, the formula for blessing images of Our Lord Jesus Christ?

Doubt V. On Holy Saturday, and also on the Saturday before Pentecost, in the blessing of the font, the baptismal font often, if not always, cannot contain enough water for the faithful to receive in vessels (before the infusion of oils) of this blessed water, to have it in their homes, chambers, etc. Therefore, the question arises: would it be permissible to place a barrel, or another sufficiently large vessel filled with water, next to the font, and to bless the water contained in it according to the rite prescribed for Holy Saturday, up to the pouring of the Holy Oils, and after this first part of the blessing is completed, to pour the aforementioned blessed water into the baptismal font, and then to continue the blessing over the font itself, as is read in the Missal, leaving the water that remains in the barrel for the use

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of the faithful?

Doubt VI. Today, at least in France, a small thimble, or small capsule, in which the Host is placed for the monstrance, for exposition of the Most Holy.

[*Latin ed. p. 637*]

ix. For the purpose of the Sacrament, a small, gilded receptacle is formed with two small, circular compartments, also reinforced with double crystal, so that the Host, placed within said small capsule, is clearly visible through the glass from both sides of the same capsule. However, when the Host is to be consecrated for the exposition of the Most Holy Sacrament, the aforementioned lunule or capsule, having been extracted from the ostensorium, is carefully closed, and the Host to be consecrated is placed at the beginning of Mass upon the corporal, and the question is asked: Should said lunule or capsule be opened before the offering, and especially before the consecration, even though the Host is clearly visible to the priest through the glass or crystal? As it is necessary to uncover the vessels containing the Hosts to be consecrated, according to the rubric of the Missal, so that it is not permissible to consecrate the Host with the crystal or glass covering it, or remaining enclosed between the two crystals of the lunule? Therefore, the Sacred Congregation of Rites, having heard a carefully considered opinion in writing from one of the Masters of the Ceremonies of the Apostolic See, and having heard the opinion of the Reverend Father Lawrence Salvati, Promoter of the Faith, and after carefully examining all the matters presented by the undersigned Secretary, has decided as follows:

637 Ad I. Regarding the first question, Affirmative, whenever it concerns a sepulcher made of new material; regarding the second question, it is sufficient to observe what is prescribed by the Roman Ritual.

Ad U. Affirmative, but the formula prescribed in the Roman Missal must be observed.

Ad III. Regarding the first question, Affirmative; regarding the second and third, the formula to be recited should be followed as it is written.

Ad IV. Regarding the first question, Negative; regarding the second, Negative for the first part, Affirmative for the second.

Ad V. Affirmative, that is, it is permissible to complete the blessing of the water in only one vessel placed outside the font, and then to pour it into the font itself before the mixing of the Holy Oil.

Ad VI. Affirmative, and a decree was given in the Apostolic Vicariate of Denmark on February 4, 1871, item 4 (1). And thus it was written, declared, and ordered to be observed.

September 4, 1880.

PAPIEN. Reverend Monsignor Augustine Riboldi, Bishop of Papien.

Sacred Rites (1)

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VICARIATE APOSTOLIC OF DENMARK.

Doubt 4. Is it permissible to use a lunule, which consists of two glass spheres joined by a thin rim or a gilded silver circle that can be opened and closed, so that the sacred Host adheres to the silver circle, but before and behind the glass spheres themselves, it touches them immediately, and is held upright by them, to expose the sacred Host in the ostensorium?

Answer: Regarding 4. As is explained in the case, it is not fitting to enclose the sacred species in plates whose surface touches them immediately, between glass.

[*Latin ed. p. 638*]

638 APPENDIX v. The following questions were humbly submitted to the Congregation for consideration:

I. Whether a Bishop can permit a tonsured cleric, or at least a Minorite, to perform the functions of a Subdeacon at Mass, even when priests are present; who, however, are occupied with singing, hearing confessions, or other duties of the sacred ministry? And in the case of a complete lack of priests, is it permissible for the Bishop to allow this in rural parishes, or rather, should the Mass be celebrated there without the assistance of sacred ministers?

II. Whether the custom can be tolerated, and indeed should be tolerated, whereby organs are played at Masses for the Dead to compensate for the lack of singers; and especially, whether the abolition of such an ancient custom would cause scandal among the people?

III. Whether it is permissible for the Most Holy Sacrament of the Eucharist to be reserved in chapels in the houses of the Institute of the Daughters of Charity, commonly known as the Canossians, which are located near the dormitories where the girls are educated? And if not, a suitable Indult is requested, provided that it is not possible to make the premises distinct from the present use, without causing serious inconvenience and damage.

IV. Whether it is permissible in the Papal Hospital, for the Most Holy Sacrament of the Eucharist to be reserved in one of the two chapels there, even if the sacred rites are not performed there on all festive days; or whether this should be entirely prohibited, despite the danger to which the sick and dying would be exposed, who would be deprived of the Most Holy Viaticum, due to the considerable inconvenience for the priest in going to the other chapel to provide the sacred assembly for them?

V. Since the Congregation of Rites responded to a request presented by the aforementioned Reverend Bishop, stating: "Decrees prohibit the distribution of the Eucharistic Communion to the faithful during the time that the Most Holy Sacrament remains exposed for public veneration on the altar, which must be reserved in another altar entirely," it is asked whether this response should also be observed in rural parish churches, in which

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case, since a secondary altar is present, it would be very inconvenient and improper to administer the Holy Sacrifice there?

The Congregation of Rites, after carefully considering each of these questions, and after hearing the opinion of another of the Masters of the Sacred Ceremonies, as well as the Reverend Assessor of the Congregation itself, decided that the following should be the response, as recorded by the Secretary below:

To I. A Decree shall be issued in Florence on July 22, 1848.

(1) Ad ill. The custom should be maintained. - (1) FLORENTIN. OR, OF THE MINOR ORDER OF OBSERVANCE.

[*Latin ed. p. 639*]

Regarding III. For the sake of decorum, and in accordance with the design: The altar should be adorned with a large canopy, commonly called a baldachin. Regarding IV. Negatively, and in accordance with the design. The altar should be such that the priest may take the Most Holy Eucharist from a nearby sacristy and carry it beneath his chest, enclosed in a container. Regarding V. It is not necessary, and in accordance with the design: In these churches, a small, removable ciborium should be placed beside the altar, and, if necessary, instead of the barrier, commonly called a balustrade, benches should be placed around. And thus he responded, declared, [reference v. 639, and ordered it to be observed. On November 23, 1880. DOUBTFUL. When the following doubt was presented to the Sacred Congregation for the Propagation of the Faith, namely, whether a Bishop in his own diocese, or an Apostolic Vicar in the place of his jurisdiction, is obliged to yield the Pontifical throne to an Apostolic Delegate present? it was transmitted to the Sacred Congregation of Rites. The daily "Guardian of the Order of the Friars Minor of the Observance, of the Monastery of All Saints in the city of Florence," earnestly requested that the Sacred Congregation deign to declare the following doubts: 1. Does a General Decree exist permitting a single solemn Mass of Requiem in any church, during the Octave of the Dead? 2. Is it permissible to play the organ during solemn Masses on Sundays of the Sacred Advent and Lent, except for those Sundays excepted by the Rubrics? And to the extent that this practice exists in any church, should it be eliminated? 3. Since the sacred images are veiled on Saturdays, is it permissible to uncover them on Friday, the Paraskeve, and not until the Angelic Hymn on Holy Saturday, as the Rubrics themselves prescribe? 4. Is it permissible for a Proclamation to be recited on Holy Saturday by another deacon different from the one who serves at Mass, so that there are two deacons, one serving at Mass, and the other reciting the Proclamation? 5. Can a regular cleric, who has not yet received the tonsure, sometimes perform the office of Subdeacon at a solemn Mass; provided that another priest, or someone of a higher order, is present who can serve as Subdeacon at the same solemn Mass? The

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same Sacred Congregation, in these ordinary meetings held at the Quirinal, with me present as the undersigned Secretary, decided that the following should be answered: Regarding 1. No General Decree exists. Regarding 2. This practice should be eliminated. Regarding 3. The images must remain veiled until the Angelic Hymn of Holy Saturday, according to other Decrees. Regarding 4. This practice is contrary to the Decrees. Regarding 5. In a case of necessity, provided there is no other [deacon] available; but there must be a cleric. And thus he wrote, and ordered it to be observed. On July 22, 1848.

[*Latin ed. p. 640*]

640. Furthermore, the Sacred Congregation of Rites, having carefully considered the matter, has decreed as follows: A Bishop or Apostolic Vicar may, but is not obliged, to do so. And thus it decreed, and responded in writing. On December 7, 1880, in PLACENTINA. When the Most Reverend Lord John Baptist Scalabrini, Bishop of Placentina, proposed the following two questions to the Sacred Congregation of Rites, namely: I. Whether those Canons who, while assisting the Bishop in solemnly administering the blessing with the Most Holy Sacrament of the Eucharist in the Cathedral or in another church of the city, are obliged to wear the tunic as prescribed in the Roman Pontifical on the feast of Corpus Christi? II. Whether the ancient custom can be tolerated, by which the Canon Deacons assist the Bishop, who is wearing sacred vestments, with a large cape, which is carried by the same Deacons? The Sacred Congregation, having duly considered these questions, judged that the following should be answered: To I: Affirmative. To II: Negative, and that the established custom should be completely eliminated as an abuse. And thus it responded, and wrote in reply. On January 15, 1881. "To the Most Reverend Lord, as a brother, a question recently proposed by A. T. has been transmitted from the Sacred Congregation for the Propagation of the Faith to this Sacred Congregation of Rites, namely, whether, when other means are lacking to prevent thieves from breaking into the tabernacle and stealing sacred vessels made of metal in which the Most Holy Sacrament is kept, and thus profaning the sacred species with a heinous crime, it is permissible for the Bishop to order that the Most Holy Eucharist be kept only wrapped in a corporal, whenever the danger of such a crime is feared. The Sacred Congregation, with the reference of the undersigned Secretary of the Sacred Congregation of Rites, having carefully considered all the circumstances, judged that the following should be decreed: It is not advisable, and the Bishop should take care that the Sacred Eucharist is kept more securely. While I communicate this response to Your Eminence for the sake of my office, I must also urge that care be taken that in every church where the Most Holy Sacrament is kept, there is never a lack of a custodian; who should reside near it, as prescribed by ecclesiastical regulations. Rome, February 17, 1881. To the

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Most Reverend Lord, as a brother, Bishop Altonen."

[*Latin ed. p. 641*]

641 FROM THE CONSISTORY ACTS - On May 24, 1889. ADDRESS: Most Reverend Fathers, your esteemed College and the Order of Bishops are filled today! We are very pleased that you are here, and we desire that nothing be said in this place except what is permitted.

However, how can we be joyful in such a difficult and laborious state? As you see, the evils and inconveniences that followed the capture of the City nineteen years ago are still present: indeed, they have become more serious with the passage of time, and it does not appear what course they will take, if the will of the enemies is considered, whose animosity we experience with increasing bitterness.

You are witnesses, Venerable Brothers, to how things are proceeding, and to the audacity with which the Roman Pontiff is violated on one side, and the impunity on the other. And there is no doubt what plans are being hatched: they are erupting from all sides, and are confirmed by a multitude of testimonies. Indeed, the animosities against Christian institutions are exercised daily with increasing severity, and the Roman Pontiff is oppressed and his freedom restricted. Therefore, we see that the power of the Holy See is being incited, and the envy of the multitude is inflamed daily by impudent words.

And now it has come to this, that in this very city, before our very eyes, impiety is permitted to injure the religion of Jesus Christ with great and lasting injury, and to deny the honors and virtues due to those who have deserted the Catholic name, without any semblance of shame. For these reasons, a certain concern holds Catholics from all lands, as if fixed in their hearts. For they cannot bear lightly the unworthy condition of the public parent, nor can they neglect the freedom of the most august ministry in the Bishop of their souls.

We are never consoled by the wonderful piety and the greatest zeal: but recently, when princes from various parts of Europe had convened with great willingness in the principalities, to discuss useful matters for the common good, you know how much of their thoughts and concerns they devoted to the Holy See. Indeed, they considered it necessary to defend the freedom of the apostolic office in the Pontiff by civil authority, and they expressed their opinions to Atta, Vol. XXI, page 41.

[*Latin ed. p. 642*]

642 From the Acts of Consistory, examples and doctrines of the Apostolic See were confirmed, as was fitting. And concerning that which it was determined to investigate by every legitimate means, so that the Pontiff might be restored to his due freedom, they made use of their right, for the most just cause, which ought to be considered common to all

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Catholics, in taking up the matter in Tulle. — For this cause, indeed, We, as We ought, have long defended it, and may God be propitious that it be vindicated; neither the length of time nor any magnitude of difficulties will deter Us. Now, in order to carry out this purpose, We have decreed to summon to Our College several Bishops from France, Belgium, and Bohemia, commended for their piety and doctrine, who have given a clear example of episcopal virtues in the administration of their respective dioceses: also two archbishops, who for a long time have diligently served the Apostolic See through various offices. These are: FRANCIS MARIA RICHARD, Archbishop of Paris; JOSEPH ALFRED FOVLON, Archbishop of Lyons; AMATUS VICTOR GUILBERT, Archbishop of Bordeaux; PETER LAMBERT GOOSSENS, Archbishop of Mechlin; FRANCIS PAUL SCHÖNBORN, Archbishop of Prague; ACHILLES APOLLONI, Vice-Chamberlain of the Holy Roman Church; CAJETAN DE RUGGIERO, Prefect of the Vatican Works. What do you think? Therefore, with the authority of Almighty God, of the holy Apostles Peter and Paul, and Our own, We create and publicly proclaim the following as Cardinals of the Holy Roman Church. From the Order of Presbyters: FRANCIS MARIA RICHARD, JOSEPH ALFRED FOVLON, AMATUS VICTOR GUILBERT, PETER LAMBERT GOOSSENS, FRANCIS PAUL SCHÖNBORN. From the Order of Deacons: ACHILLES APOLLONI, CAJETAN DE RUGGIERO. With the necessary and opportune dispensations, derogations, and clauses. In the Name of the Father, and the Son, and the Holy Spirit. Amen.

[*Latin ed. p. 643*]

FROM THE CONSISTORY ACTS 643. After the report was heard, the Most Holy Pope Leo XIII proposed the following sees: The CATHEDRAL CHURCHES of Ostia and Vaux, to be perpetually and canonically united; they are vacant, due to the death of the Most Reverend Monsignor Charles, while he was alive, the Cardinal Sacconi of the Holy Roman Church, the last Bishop of those sees, who died near the Roman curia. He intends to appoint the Most Reverend and Right Reverend Raphael, of the Holy Roman Church, Cardinal Monaco of Vaux, Dean of the Sacred College, and Bishop of Albano Laziale, but with the see of Albano Laziale relinquished. The CATHEDRAL CHURCHES of Portus and Saint Rufina, to be perpetually and canonically united; they are vacant, due to the death of the Most Reverend Monsignor John Baptist, while he was alive, the Cardinal Pitra of the Holy Roman Church, the last Bishop of those sees, who died near the Roman curia. He intends to appoint the Most Reverend and Right Reverend Aloysius, of the Holy Roman Church, Cardinal Oreglia of Saint Stephen, Bishop of Palestrina, but with the see of Palestrina relinquished. The CATHEDRAL CHURCH of Palestrina, vacant, due to the translation, by virtue of appointment, of the Most Reverend and Right Reverend Aloysius, of the Holy Roman Church,

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Cardinal Oreglia of Saint Stephen, to the sees of Portus and Saint Rufina, which he intends to appoint the Most Reverend and Right Reverend Angelus, of the Holy Roman Church, Presbyter Cardinal Bianchi, with the title of Saint Praxedes, retaining the aforementioned presbyteral title in commendam. The CATHEDRAL CHURCH of Albano Laziale, vacant, due to the translation, by virtue of appointment, of the Most Reverend and Right Reverend Raphael, of the Holy Roman Church, Cardinal Monaco of Vaux, Dean of the Sacred College, to the sees of Ostia and Vaux; which he intends to appoint the Most Reverend and Right Reverend Lucidus Maria, of the Holy Roman Church, Presbyter Cardinal Parocchi, with the title of Saint Cross in Jerusalem, relinquishing the aforementioned presbyteral title. The ARCHIEPISCOPAL TITULAR CHURCH of Myra, vacant, due to the death of the Reverend Monsignor Stephen Marilley, the last Archbishop, who died outside the Roman curia, with the favor of the Reverend Father Joseph Maria Guide, Archbishop of Modena, and Abbot Commendatory of the Monastery of Saint Sylvester in the Territory of Nonantola. The METROPOLITAN CHURCH of Modena, with the Abbey of Saint Sylvester in the Territory of Nonantola, formerly of the Order of Saint Benedict, attached to it in perpetuity, is vacant, due to the resignation of the Reverend Father Joseph Maria Guide and the Guidi family, of their own free will.

[*Latin ed. p. 644*]

644 FROM THE CONSISTORY ACTS, having been performed three times in the hands of His Holiness, and having been approved by the same, and through the subsequent promotion of the aforementioned Prelate to the Archiepiscopal Church of Myra; with the favor of His Eminence, Cardinal Charles Borgognoni, Archbishop of Urbino. THE METROPOLITAN CHURCH OF VERCELLI, vacant, due to the death of the Most Reverend Matthew Fissore, the last Archbishop, who died outside the Roman Curia; with the favor of the Most Reverend Lawrence Charles Pampirio, of the Order of Preachers of Saint Dominic, Bishop of Alba, or Alba Pompeia. THE ARCHIEPISCOPAL CHURCH WITH THE TITLE OF HERACLEA, vacant, due to the death of the Most Reverend Francis Converti, the last Archbishop, who died outside the Roman Curia; with the favor of the Most Reverend Joseph Francis Nava and Bontifé, titular Bishop of Alabanda. THE METROPOLITAN CHURCH OF ROSSANEN, vacant, due to the death of the Most Reverend Peter Cilento, the last Archbishop, who died outside the Roman Curia; with the favor of the Reverend Salvatore Palmieri, of the Congregation of the Mission of the Precious Blood of Our Lord Jesus Christ, a Priest of Benevento. He, born of legitimate, Catholic, and honorable parents in Benevento, and having surpassed the sixty-second year of his age, having fulfilled the office of definitor general of his Congregation and of pro-

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synodal examiner for the Barensis archdiocese, has now renounced his position as superior in the house of the same Congregation, established in the city of Bar. THE CATHEDRAL CHURCHES OF CASTELLAN, HORTAN, AND GALLESIN, perpetually and canonically united, vacant, due to the death of the Most Reverend Dominic Mignanti, the last Bishop, who died outside the Roman Curia; with the favor of the Reverend John Baptist Carnevalini, a Priest of Rome. He, born of legitimate, Catholic, and honorable parents in Rome, and having surpassed the forty-sixth year of his age, having recently been granted the license in both doctoral philosophy and sacred theology, has now renounced his position as Canon and Urban Curate at Saint Mary in Via Lata. THE CHURCH WITH THE TITLE OF HETALONIA, under the Archbishop of Bostra, vacant, due to the death of the Most Reverend Henry Scaap, the last Bishop, who died outside the Roman Curia; with the favor of the Reverend Joseph Izzo, a Priest of the Neapolitan Archdiocese, who was also appointed as coadjutor with future succession to the Most Reverend Joseph Carranp, Archbishop of Cava and Sarno. The Reverend Joseph Izzo, born of legitimate, Catholic, and honorable parents in Casali Bosci Trium domorum, of the Neapolitan Archdiocese, and having surpassed the forty-first year of his age,

[*Latin ed. p. 645*]

FROM THE CONSISTORY ACTS:

Having surpassed 645 years of age, and having previously received a doctorate in sacred theology, the parish priest of Saint Anne in Casali Bosci Trium domorum, in the Archdiocese of Naples, has now resigned from his office.

THE EPISCOPAL CHURCH OF HERMOPOLITAN, under the Archiepiscopal see of Damiata, is vacant, due to the translation of Reverend Father Charles Francis Bonaventure Theuret to the Cathedral See of Monaco, with the favor of Reverend Raphael Valenza, a priest of Theate, who was also appointed as an auxiliary to Reverend Father Rocchi Cocchia, the Archpriest of Theate.

Reverend Father Raphael Valenza, born in Theate from legitimate, Catholic, and honorable parents, and having reached his seventy-first year, has now resigned from his offices as Canon in the metropolitan city, and as visitor, commissary, and pro-synodal examiner of the same city and archdiocese.

THE EPISCOPAL CHURCH OF HELENOPOLITAN, under the Archiepiscopal see of Nicomedia in Bithynia, is vacant, due to the death of the Reverend Monsignor Flaviano Simoneschi, the last Bishop, who died near the Roman Curia, with the favor of Reverend Father August Berlucca, a priest of Rome. He was born in Rome from legitimate, Catholic, and

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honorable parents, and having reached his forty-eighth year, he previously received a doctorate in philosophy, sacred theology, and both laws; for many years he was a Canon and parish priest of Saint Mary Transtiberim, until now, and has served as the president of the Hospice called "of the Hundred Priests," and as director of rural missions.

THE METROPOLITAN CHURCH OF TARRACONEN is vacant, due to the death of the Reverend Monsignor Benedict Vilamitjana and Viia, the last Archbishop, who died outside the Roman Curia, with the favor of Reverend Father Thomas Costa and Fornaguera, the Bishop of Illerda, for presentation to the Most Serene Queen, Regent of the Catholic Kingdom.

THE METROPOLITAN CHURCH OF LIMAN, in the territory of Peru in South America, is vacant, due to the death of the Reverend Monsignor Francis Orueta and Castrillon, the last Archbishop, who died outside the Roman Curia, with the favor of Reverend Father Emmanuel Anthony Bandini, the titular Bishop of Antipatris, for presentation by the most illustrious Sir Andrea Avellini Caceres, President of the Republic of Peru, by virtue of an Apostolic Indult.

THE METROPOLITAN CHURCH OF SANTA FE DE BOGOTA, in the Confederation of States of the Republic of Colombia, in South America, is vacant.

[*Latin ed. p. 646*]

646 FROM THE CONSISTORY ACTS: The sees of:

The Archiepiscopal See of Pastopoli, vacant by the death of the Most Reverend Joseph Telesphorus Paul, the late Archbishop, who died outside the Roman Curia, with the favor of the Reverend Father Ignatius Velasco of the Society of Jesus, Bishop of Pastopoli.

The Cathedral Church of Zacatecas, in the territory of Mexico, in North America, is vacant by the death of the Most Reverend Joseph Mary of the Refuge Guerra, the late Bishop, who died outside the Roman Curia; with the favor of the Reverend Father Bonaventure Portillo, of the Order of Friars Minor Observant of Saint Francis, Bishop of Chilapa.

The Cathedral Church of Nîmes, vacant by the death of the Most Reverend Nicholas Francis Aloysius Besson, the late Bishop, who died outside the Roman Curia, with the favor of the Reverend Father John Alfred Gilly, a priest of the Diocese of Nîmes, at the nomination of the most illustrious man Francis Mary Sadi-Carnot, President of the French Republic.

The Reverend Father John Alfred Gilly, born of legitimate, Catholic, and honorable parents in the place commonly called Anduze, in the Diocese of Nîmes, and having reached the age of sixty-one, having recently received the doctorate in theology and canon law at the Gregorian University in Rome, was chosen as the General Vicar in spiritual matters of Nîmes, and having previously been a Canon of that Cathedral, he renounced that office

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when the see became vacant.

The Cathedral Church of Dinières, vacant by the death of the Most Reverend Henry Abel Mortier, the late Bishop, who died outside the Roman Curia, with the favor of the Reverend Father Paul Servonnet, a priest of the Diocese of Gratianopolis, at the nomination of the most illustrious man Francis Mary Sadi-Carnot, President of the French Republic.

The Reverend Father Peter Paul Servonnet, born of legitimate, Catholic, and honorable parents in the place commonly called Pierre de Bressieux, in the Diocese of Gratianopolis, and having surpassed the age of fifty-nine, having been secretly chosen as a Suffragan Bishop of either Gratianopolis or Lyons, according to the Metropolitan of Lyons, he previously renounced his office as a Canon.

The Cathedral Church of Mimet, vacant by the voluntary and willing resignation of the Reverend Father Julian Costes, which was carried out and accepted by His Holiness, with the favor of the Reverend Father Francis Narcissus Baptifolier, a priest of Paris, at the nomination of the most illustrious man Francis Mary Sadi-Carnot, President of the French Republic.

The Reverend Father Francis Narcissus Baptifolier, born of legitimate, Catholic, and honorable parents in Lutetia, Paris, and having surpassed the age of sixty-eight, was a Vicar.

[*Latin ed. p. 647*]

FROM THE CONSISTORY ACTS:

647. Having performed the duties of a parish priest, the parish priest of Saint Bernard, commonly known as "de la Chapelle," in Paris, has resigned his office.

THE CATHEDRAL CHURCH OF VAPINCENS is vacant, due to the death of the Most Reverend John Alphonsus Blanchet, the last Bishop of that diocese to have died outside the Roman Curia, with the favor of the Reverend Amable Prosper Berthet, a priest of the Diocese of Vapincens, for the nomination by the most illustrious Yiri Francis, Mary, of Sadi-Carnot, President of the Gallic Republic.

The Reverend Amable Prosper Berthet, born of legitimate, Catholic, and honorable parents in the town called Xieres in the Diocese of Vapincens, having surpassed his fifty-first year, having served as Prefect of Philosophy and Moderator in the small diocesan seminary of Ebrodunum, and as Director in the large seminary; having been first appointed as parish priest in the place of Plane-de-Vitrolles, and then as pastor and archpriest of the city of Serres in his native diocese, has now resigned.

THE CATHEDRAL CHURCH OF PASSAVIENS is vacant, due to the death of the Most Reverend Joseph Francis de Wechert, the last Bishop

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of that diocese to have died outside the Roman Curia, with the favor of the Reverend Anthony Thomas, a priest of the Archdiocese of Munich-Freising, for the nomination, by virtue of an Apostolic Indult, of the Most Serene Prince Luitpold, Regent of the Kingdom of Bavaria.

The Reverend Anthony Thomas, born of legitimate, Catholic, and honorable parents in the place commonly called Nymphenburg in the Archdiocese of Munich-Freising, having surpassed his sixtieth year, having been established as parish priest of Saint Zenon and of the Holy Spirit in Munich, having been received into the canonry in the metropolitan chapter of Munich, and having resigned from his office as vicar of that parish.

THE METROPOLITAN CHURCH OF MANILA in the Philippine Islands is vacant, due to the death of the Most Reverend Peter Payo, the last Archbishop of that diocese, who died outside the Roman Curia; with the favor of the Reverend Father Bernardinus Nozaleda de Villa, a priest of the Diocese of Oviedo, and a solemnly professed member of the Order of Preachers of Saint Dominic, for the presentation by the Most Serene Queen Catholica, Regent.

The Reverend Father Bernardinus Nozaleda da Villa, born of legitimate, Catholic, and honorable parents in the place called Cuenya in Pola de Nava, in the Diocese of Oviedo, having surpassed his forty-fifth year, having recently been awarded a doctorate in canon law, and having solemnly professed his vows in the Order of Preachers of Saint Dominic, having served as a consultant to the recently deceased Archbishop of that Church, and having acted as a missionary across the sea, having performed the office of Prior in the Convent of Saint Dominic.

[*Latin ed. p. 648*]

648 LIMBURG. The Rector-President of the College of St. John of the Lateran in Manila has resigned. The Cathedral Church of Nova Segobia in the Philippine Islands is vacant, due to the death of the Most Reverend Mariano Cuartero, the last Bishop of that See, who died outside of Rome; and the Most Reverend Father Joseph Hevia Campomanes, a priest of the Diocese of Oviedo and a professed member of the Order of Preachers of St. Dominic, is presented to the Most Serene Queen of the Catholics, Regent. The Most Reverend Father Joseph Hevia Campomanes was born in the place commonly called Pola de Lena, in the Diocese of Oviedo, of legitimate, Catholic, and honorable parents, and has surpassed his forty-eighth year. He made his solemn vows in the Order of Preachers of St. Dominic. Having been devoted to missionary work overseas, he was the parish priest of the church of Santa Rosa, in the province of Laguna, and until recently, of the place now called Binondo, in the province of Manila. The Cathedral Church of Colimen, in the territory of Mexico in North America, is vacant, due to the translation of the Reverend Father Francis Melithon Vargas to the See of Tlascala, or Angelopolis; and the Reverend Father Francis Diaz,

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a priest of the archdiocese of Guadalajara, is presented. He was born in the parish commonly called Catorce, in the former archdiocese of Guadalajara, now the diocese of Potosi, of legitimate, Catholic, and honorable parents, and, having reached his fifty-sixth year, having served as a chaplain in Guadalajara for the nuns of Mount Carmel, and having taught Latin and philosophy in the seminary, for many years he has cared for souls in the parishes commonly called Aimalulco, Tizapan Alto, Mascota, and San Gabriel of his archdiocese; and he has now resigned from the benefice held in the metropolitan archdiocese of Guadalajara. FROM THE SACRED CONGREGATION OF THE COUNCIL - - - LIMBURG. DOUBTS REGARDING CLANDESTINE MARRIAGES. January 19, 1889. Session 24, Chapter 1, reference. SUMMARY OF THE CASE. The Bishop of Limburg reported to the Most Holy Father, in a letter submitted as evidence, the following:

[*Latin ed. p. 649*]

LIMBURGEN. April 24, 1885. Before the local priest of Bornheim, a town connected to Frankfurt for approximately ten years, appeared Johannes Schuh and Christina Wirtz, Catholic betrothed, requesting that the marriage banns be duly proclaimed, so that they might enter into marriage and, thereafter, be joined in a marital bond according to the Catholic form. The groom was found to be free; the bride, however, had married another man, named Henricus Müller, before a civil authority on March 1, 1880. This marriage, however, was declared null by the judgment of the royal judge on June 12, 1884, due to the adultery of the husband. Indeed, Henricus had abandoned Christina on October 18, 1882, and had gone to North America, together with another woman, named Lina Iacobi, with whom he is believed to have had carnal relations.

Upon learning these facts, the priest of Bornheim reported the case to this Episcopal Curia, in order to ascertain whether it was permissible to grant the petition of the betrothed, Johannes Schuh and Christina Wirtz, and to lawfully join them in marriage after the banns had been proclaimed, or not. He received the response that, before a judgment from the Ordinary regarding the state of Christina's freedom, it was not permissible to proceed. However, while the validity or invalidity of this marriage was being debated between the priest and this Episcopal Curia, Christina, without expecting an ecclesiastical judgment, entered into marriage with Johannes Schuh before a civil authority. Subsequently, the priest approached him again, requesting that he be permitted to contract the marriage with Christina also before the Church, and to receive the Sacraments of penance and the Eucharist.

Given these circumstances, I am uncertain as to what course of action should be taken in this case. For a long time, learned men have debated whether the decree of the Council of Trent, which invalidates clandestine marriages, was publicly proclaimed in the parish of Frankfurt, and specifi-

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cally in the town of Bornheim. And this important question has not yet been resolved definitively. Moreover, at the present time, when the so-called civil marriage has been introduced in Germany, cases similar to that of Christina Wirtz are not uncommon. It is therefore greatly desired that the highest ecclesiastical authority establish principles according to which the Ordinary may and should proceed in such matrimonial cases.

First of all, it must be noted, as the Bishop observes, that the parish of Frankfurt, together with the town of Bornheim, belonged to the archdiocese of Moguntia until the establishment of this Diocese of Limburg; and that the city of Frankfurt, as a free city of the German Empire, was politically autonomous until the year 1866.

[*Latin ed. p. 650*]

6. LIMBURGEN. This city, adhering to the Lutheran heresy, soon began to favor the sectaries and to harass the Catholics, to the point that, up to the year 1549, they were deprived even of their churches, and public Catholic worship ceased for twenty-three years. However, in the year 1549, the Catholics recovered the principal collegiate church of St. Bartholomew, as well as the subsidiary churches of the Blessed Virgin and of St. Leonard, and from then on, with only two exceptions, namely the years 1633 and 1634, in which Swedish soldiers occupied the church of St. Bartholomew by force, they have always enjoyed religious freedom to a greater or lesser extent; moreover, the ecclesiastical authority of the Archbishop of Moguntia has always remained over the parish of Fermo, and has been unwavering, although the exercise of religion within the walls of the churches has been restricted. Four decades after the confirmation of the decrees of the Council of Trent had elapsed, Daniel, at that time Archbishop and Elector of Moguntia, on January 22, 1582, issued a decree, applicable only to his own archdiocese, in which he strictly prescribed that all and each of those things which the Holy Synod, in the chapter concerning marriage, had determined, especially also the law which renders clandestine marriages invalid in the future, should be observed by his faithful; and he added that this his archiepiscopal decree would take effect only thirty days after its first publication in each parish, and that the parish priests or administrators of the parish should note by their own hand on the page of the decree that the publication had been duly effected. However, throughout the entire course of this archiepiscopal decree, no mention whatsoever occurs of the Synod of Trent, except perhaps obscurely in that place where the Archbishop speaks of prohibited degrees of kinship, saying: "Therefore, we command that these prohibited degrees, as they are now established and declared in ecclesiastical law, should be more carefully observed in the future, and that they should be observed entirely." Regarding the rest, the Archbishop consistently calls this his own decree. Daniel was immediately succeeded in the government of the archdiocese by "Wolfgartus

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de Dalberg, 1582-1601, who, for his entire jurisdiction, in the year 1599, took care to issue it anew, in whose preface, dated August 23, 1598, the Council of Trent is expressly mentioned. In the instruction of the Agendum concerning the sacrament of marriage, on page 52, it states: "According to the decree of the Council of Trent, it is necessary for the proper parish priest or another priest, with the license of the parish priest or Ordinary, to be present, with two or three witnesses." Concerning the publication of the-

[*Latin ed. p. 651*]

LIMBURGEN. 651. Concerning the matter itself, it states nothing about each parish. "Archbishop John Shweihardt of Cronenberg, on July 10, 1615, issued a decree regarding divine service, in which he recalled the decree of his predecessor, Daniel, from the year 1582, concerning marriages. Furthermore, Archbishop John Philip of Schoenborn, who, in 1648, had ordered the re-issuance of the decrees of his predecessor, Shweihardt, ordered in 1664 that the Tridentine decree on clandestine marriages be published throughout his entire Archdiocese. This publication is attested to in the *Agenda Archidioecesium* of the Archdioceses of Mainz and Treves, compiled and published in Mainz in 1703: 'In the Diocese of Mainz, in the year 1664, the reception, i.e., the decree of the Council of Trent, was published in all parishes, affixed to the doors of the churches, and entered into the judicial records.' Regarding this publication, the Bishop presented further documents. In 1670, the same Archbishop John Philip issued a renewed ecclesiastical order, in which, among other things, he emphasized the Tridentine law regarding the three banns to be announced before the celebration of marriage. The following year, 1671, he published a *Ritual* for the Archdiocese of Mainz and the Dioceses of Würzburg and Worms, in which, concerning marriage matters, he prescribed the following (p. 202): 'The parish priest must, above all, himself be well acquainted with all those things which must be observed in the proper celebration of marriages, according to the sacred canons, and especially according to the decrees of the Holy Council of Trent; and he must take care that these are accurately and faithfully observed in his parish. He must especially remember that clandestine marriages, and any marriages which are contracted otherwise than in the presence of the parish priest and two or three witnesses, are entirely null and void according to the decrees of that Council.' The successors of Archbishop John Philip also confirmed and emphasized the decrees of their predecessors concerning the observance of the decrees of the Council of Trent in marriage matters. Regarding the parish of Frankfurt, it must be assumed that the publication of the Tridentine decree, by virtue of the edicts of John Philip and his successors, was properly carried out there, as in other parishes of the Archdiocese of Mainz, unless the contrary is clearly proven. As has been said, the authority of the Archbishop of Mainz in the parish of Frankfurt, especially from the time of John Philip, was

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unquestionable and unwavering. And also..."

[*Latin ed. p. 652*]

652 LIMBURG. From various notes in the marriage register of this parish, concerning dispensations for marriages granted by that curia and its vicariate of Aschaffenburg, as well as from historical tradition, it is clear. Furthermore, it is to be considered that various Rituals, published by these Archbishops and prescribed for the entire Archdiocese, were certainly in use in Frankfurt; and since in these Rituals the *forma* of Trent was prescribed as absolutely and indeed under penalty of nullity for validly contracting marriage, it can already be doubted that the decree of Trent, of which we are speaking, was not known to the parishioners of Frankfurt, both through preaching, and through catechesis and Christian instruction, and that it did not pass into force of law. This usage is most clearly evident from the marriage registers of the parish, which have been preserved since the year 1640. Moreover, given the opportunity, it is also explicitly testified that in Frankfurt, the *forma* of Trent was considered absolutely essential in contracting marriages of Catholics. And here are various marriages, through which this assertion is confirmed; among these marriages, the following note is worthy of mention: "On March 17, 1806, concerning the aforementioned betrothed, Himmelsverth and Höffner, it is noted: 'The aforementioned betrothed, H. and H., already on January 6, before the senior and doctor Hufnagel (note: a Protestant minister), contracted marriage, but it was null, because both are Catholics.'" This last testimony, in particular, clearly demonstrates that at the beginning of this century, marriages of Catholics in Frankfurt, disregarding the *forma* of Trent, were considered to be invalid. However, despite all of this, doubts are raised about the publication and validity of the decree of Trent in the parish of Frankfurt. Firstly, no historical document has yet been found that proves the publication of the decree of Trent in Frankfurt. Neither in the archives of the Collegiate Church and the parish church of Saint Bartholomew, nor in the protocols of the chapters of this college, of which the Dean was the primary parish priest from the years 1563-1624, nor in other documents of this college, is any indication of such a publication found; nor does the Consistorial Decree of Mainz, dated July 10, 1664, still exist. It is also not demonstrated that the decree of Archbishop Wolfgang from the year 1599 was in force in the parish of Frankfurt.

[*Latin ed. p. 653*]

LIMBERGEN, 653: It is stated that if this had indeed been the case, it could not be proven, and that the publication of this decree, which concerns the necessity of a parish priest's assistance with two witnesses in contracting marriages, could be deemed sufficient. It is further added that it is incredible that the city magistrate, in the years immediately following

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the Council of Trent, permitted the publication of any decree of that Council, when, together with other Protestant princes and cities allied with the empire, it refused to participate in the Council. Moreover, the permission granted by the magistrate of Frankfurt to publish the decree of the Council of Trent concerning the reform of marriage was plainly contrary to the reduction of the ecclesiastical jurisdiction of the Catholic Church, since that decree strengthens and confirms the rights of the Church in matters of marriage. It is objected that the decree of Trent concerning the nullity of clandestine marriages was not published in the year 1664, but [only the consistorial decree of the Archbishop, dated July 10th of that same year], although the publication of that decree does not equate to the publication of the decree of Trent, since it is required that the substance of this decree, at least, be published in a language understandable to the faithful; but that consistorial decree does not contain such substance. Finally, it is argued that what is contained in the Ritual of Archbishop Philippi of the year 1671 cannot be equated with the publication of the decree of Trent, since those words declare clandestine marriages to be indeed illicit, but not invalid, whereas the nullity of such marriages can only be brought about by the publication of the substance of the decree of Trent. However, it should be noted that the first four objections are merely negative; whereas the positive mandate of the Archbishop of 1664, ordering the publication of the decree of Trent throughout the entire Archdiocese of moguntina, to which the parish of Frankfurt also belonged, effectively nullifies their validity. The fact that, as testified by the Reverend Canon Moufang of moguntina, a scholar most learned in this matter, on July 3, 1885, no document proving the publication of the decree of Trent exists in most of the parishes of the present-day Diocese of moguntina, yet until now, no doubt has arisen concerning the supposed publication of the decree of Trent in those parishes, is also noted. It can be observed that such a document concerning the publication...

[*Latin ed. p. 654*]

654 LIMBURGEN. It could be ascertained, if it were the case, and if indeed it had not been completed, that the hostile opposition of the city senate against the decrees of the Council might have arisen from the very lack of a prescribed form for their publication. Since a specific form of publication had not been established by the Council of Trent, the pastors of the parish of Saint Bartholomew, having received the mandate of the Archbishop to publish the decrees of Trent, could, in order to avoid vexations to the Catholics by the non-Catholic senate, and to prevent a public and conspicuous display that might provoke them, present the decrees to the knowledge of the faithful in a less formal manner. Furthermore, in the year 1664, by virtue of the Peace of Westphalia of the year 1648, the Catholics of Frankfurt were granted the full exercise of their religion; how-

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ever, Archbishop John Philip was not so disposed as to yield to the senate of Frankfurt in this matter. It is also evident from the parish records of Saint Bartholomew that the Tridentine form has been observed in marriages contracted from the year 1664; which must be considered as the effect of the publication of the decree of the same year 1664, legitimately prescribed by Archbishop John Philip for the entire Diocese. In this consistorial decree, dated July 10, 1664, it is expressly stated in two places that clandestine marriages are entirely invalid; and that in matrimonial causes, the decrees of the Council of Trent must be observed. What the Council of Trent had decreed on this matter was clearly evident from the Rituale of Archbishop Wolfgang, so that it was entirely unnecessary for John Philip to again explain these matters more fully in that decree. Therefore, by ordering that the pastors solemnly notify each of their faithful that they must henceforth live according to the Council of Trent in matrimonial matters, he could rightly assume that, by publishing this consistorial decree, the pastors would certainly also explain to their faithful what the Council of Trent had decreed on this matter. It is also noted that the place called Bornheim, before the Reformation of the 16th century, is called by historical documents a village, and until the year 1481 was subject to the Counts of Hanau. Since it was located outside the walls of the city of Frankfurt, some argue that this village, as well as other places located outside the walls of Frankfurt, such as Oberdan, Niederrad, Haussen, Bonames, and Bockenheim, which were also under the jurisdiction of the Counts of Hanau, formed their own parochial community with a parish church. Furthermore, in ancient documents, the church of Bornheim is referred to as...

[*Latin ed. p. 655*]

LIMBÜRGEN. 65§ Pella is called, and it is known that, as far back as the ninth century, together with its dependencies, the church of St. Salvator, as it was then called, and the collegiate church dedicated to St. Bartholomew, were incorporated, and that the clergy of the single parish of Frankfurt were responsible for the care of souls. In the year 1481, the village of Bornheim was united with the territory of the free city of Frankfurt; in the year 1524, when the Lutheran heresy had also gained many adherents in Bornheim, as in the city of Frankfurt, the inhabitants of Bornheim, following the example of other neighboring communities, requested a parish priest from the Senate of Frankfurt. In the year 1526, they mistreated the Subprior of the Carmelites of Frankfurt, who was performing divine services there, for which reason the Senate urged the chapter of St. Bartholomew to appoint its own sacristan in Bornheim to provide for the care of souls. With the passage of time, the Lutheran sect grew so strong in Bornheim that, towards the end of the sixteenth century, the Catholic chapel was occupied by them, and scarcely any Catholics were to be found there; and those who happened to live in the place were considered to belong to the

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parish of St. Bartholomew in Frankfurt, and they attended that church; and this state of affairs remained until our time. According to the testimony of the parish priest of Frankfurt, the Reverend Muenzenberger, in the year 1776, the first Catholic bride from Bornheim is recorded in the marriage register of Frankfurt, and another follows in the year 1779. In the register of the dead, however, it is only in the year 1819 that a daughter of a craftsman from Bornheim is described as Catholic. From then on, the number of Catholics in Bornheim increased daily, so that in the year 1869, there were approximately one thousand faithful people living there, for which reason my predecessor, the Blessed Peter Joseph, on October 1st of that year, ordered a priest to reside there and entrusted him with the care of souls. Today, there are approximately four thousand Catholics living in Bornheim. It is, above all, doubtful that, in the place of Bornheim, which, at the time of the absolute Council of Trent, was already entirely devoted to the Lutheran sect, the decrees of Trent concerning the reform of marriage were ever publicly promulgated. It is, however, doubtful whether, even in that case, the Catholics of Bornheim would be bound by this decree, since it was promulgated in the parish of St. Bartholomew in Frankfurt. If the Catholics of Bornheim, before this so-called reform of the sixteenth century, belonged to the parish of St.

[*Latin ed. p. 656*]

656 LIMBURG. Since Limburg belonged to the archdiocese of Mainz, and did not possess its own proper parochial system, it must be said that its inhabitants were bound by the decrees of the Council of Trent, provided that those decrees had been publicly promulgated in the parochial church of Saint Bartholomew in Frankfurt. Indeed, the Holy Council prescribed that the publication of the decrees, in order to have effect, should take place only in parochial churches, and not also in filial churches or chapels. If, however, a parish of its own right existed in the village of Bornheim, then the publication of the decrees of Trent in the parochial church of Frankfurt would not affect the Catholics of Bornheim in any way, even if, at the time of publication, they frequented that church and were provided for spiritually by its clergy. In this case, the parish of Bornheim would have to be considered to have ceased to exist due to the influence of the sect, and the inhabitants of the village could not be considered to be subject to the jurisdiction of the parish of Saint Bartholomew in Frankfurt, simply because they were compelled by necessity to attend the church of Saint Bartholomew as parishioners of Frankfurt. There is no historical document that proves that the inhabitants of Bornheim were, after the dissolution of their own parish, legitimately and with ecclesiastical authority, assigned to the parish of Saint Bartholomew in Frankfurt. It could even be doubted whether the inhabitants of Bornheim were bound by the decrees of Trent, even if Bornheim had previously belonged to the parish of Saint Bartholomew and

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the decrees had been published there, since it is certain that those decrees were neither received nor observed in Bornheim by the sect from the 16th century until the 19th century, nor were they published from that time until the Catholic community was re-established. Since, from the 16th century onwards, a parish existed in the village of Bornheim only for Protestants, how could one maintain that, from the time when the public exercise of the Catholic faith completely ceased in the village, the village itself was completely severed from the parochial connection with the parish of Saint Bartholomew, and that, therefore, Catholics who subsequently settled in Bornheim were not considered to be members of a Catholic parish, but rather were living within the boundaries of a heretical parish and were exempt from the decrees of Trent regarding the contracting of marriages? Furthermore, the Apostolic Vicariate for the Duchy of Nassau and the territory of Frankfurt, at the beginning of this century, established a vicariate in the city of Limburg, and in a case concerning Charles Christian Gaubatz against his own wife, Wilhelmina, born on May 13th, the first instance was held on July 13th, 1824, and the second instance on July 5th, 1825.

[*Latin ed. p. 657*]

LIMBURGEN. 657 declared, in the place of Bornheim of the Council of Trent, that with regard to clandestine marriages, the decree was in no way accepted. The Bishop of Limburg, after having presented what has been written up to this point, proposed the questions related to the matter, as stated at the end of this inquiry. OPINION OF THE CONSULTOR. RESPONSE TO QUESTION I. "The decree of the Council of Trent, Session XXIV, chapter I, concerning the reform of marriages, by which clandestine marriages are annulled, having been undoubtedly legitimately promulgated in the parish of Frankfurt, binds the faithful in such a way that, there at least, marriages in which both parties are Catholic, if they are not celebrated according to the Tridentine form, must certainly be declared null and void." Since there can be no doubt that the faithful are bound by the praised decree of the Council of Trent, as soon as it has been legitimately promulgated, the entire question in the first inquiry is reduced to this: whether it is certainly established that the aforementioned chapter has been legitimately promulgated, even now in the parish of Frankfurt. Furthermore, it is useful to note that the doubt arises only concerning those who are about to marry, of whom both are devoted to the Catholic faith, and not concerning mixed marriages or marriages celebrated among themselves by Protestants. Indeed, the Protestants of Frankfurt, at the time when the aforementioned chapter was established and promulgated, already had a clearly distinct status from the Catholics, as is evident from the facts alleged; therefore, they must be considered exempt from the law of Trent in the celebration of marriages, and the principle rightly applies to the city of Frankfurt, which was adopted in its time by Pius VII for the city

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of Baltimore and by Benedict XIV for the United States of Holland (Cf. Van de Burgt, De matrimonio, p. 266 et seqq.), and which has been defended by learned men in recent years, when the aforementioned chapter was promulgated in the city of Berlin. For the law of Trent cannot, with private authority or by some lower prelate, be extended beyond the intention of the supreme legislator. Indeed, as I shall say, using the words of Benedict XIV in the constitution "Singulari nobis," it is rightly defended that the Council did not extend its decree to those marriages which gave occasion to the discussions that we resolved in the year 1741. Therefore, even mixed marriages, according to the principles established by the same Benedict XIV (Cf. Bened. XIV, De synod, dioec. I. VI, cap. 6, n. 12), Acta, Tom. XXI. fol. COLL. 42.

[*Latin ed. p. 658*]

658 LIMBURG. Because of the particular circumstances of the contract within the parish of Frankfurt, which was exempt from the same Tridentine law, and not out of strict necessity, but for greater security, a special declaration was required for the parish of Frankfurt. With these premises, it remains only to prove that, in the parish of Frankfurt, the decree of Trent concerning the form to be observed in the celebration of marriage, whether in explicit words or through long-standing observance, had certainly been promulgated, at least for Catholics, and not as if it had been observed at some point and then, after a long interval, had "fallen into disuse." Cf. the letter of Pius VII to the Archbishop of Mainz, dated October 8, 1803. Indeed, it is difficult to maintain any serious doubt about the legitimate promulgation of the Tridentine decree in the parish of Frankfurt. Certainly, it must be conceded that the first promulgations of the *Tametsi* chapter, made from the year 1582 by the Archbishops of Mainz, to whom the city of Frankfurt was then subject in spiritual matters, were either entirely nonexistent, or at least highly suspect. For Daniel, the Archbishop of Mainz, when he publicly announced, on January 22, 1582, the decree against clandestine marriages issued by the Council of Trent, which the *Tametsi* chapter contains, he indeed prescribed that they should be observed, but not in virtue of the Tridentine decree, but because of a decree established by his own authority. However, after the declaration of the Holy Congregation, confirmed by Urban VIII, cf. Benedict XIV, *De Synodis Dioecesibus*, I, XII, chapter 5, paragraphs 5 and following, the promulgation of the *Tametsi* chapter is null and void, since it is not made as a law promulgated by the Council of Trent. Nor do the words alleged by the Bishop contain a sufficient reference to the Council of Trent, since they are not only too vague and indeterminate, but they also refer very little to the new impediment of clandestinity, but rather to the prohibited degrees of kinship, which are already contained in the decretal law and, by the Council of Trent, Session XXIV, on the reform of marriage, chapters 2, 3, and 4, are certainly more clearly defined,

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or rather limited. "Wolfgang, Daniel's successor in the See of Mainz, in a decree promulgated in 1599 for his entire jurisdiction, both in the preface and in the instruction on the Sacrament of Marriage, explicitly mentions the Council of Trent, but, as the Bishop of Limburg adds, "regarding the publication of the decree itself..."

[*Latin ed. p. 659*]

LIMBERGEN. The 659th parish makes no mention of it; however, Archbishop Ioannes Schwihrdt of Cronenberg, on July 10, 1615, issued a decree concerning divine service, in which he recalled the decree of his predecessor, Danielis, from the year 1582, regarding marriages. "From these decrees as well, it is evident that a legitimate promulgation of the Tridentine decree was not made. Indeed, the former decree lacks the essential condition required for valid promulgation; for it is necessary that the promulgation be made by the mandate of the Bishop in each parish; nevertheless, I readily concede that the action of Archbishop Wolfgang! may have been the cause by which the Tridentine decree was promulgated in practice and observance. The second decree of the year 1615 suffers from the same defect; and even if the decree of Archbishop Danielis had been promulgated anew in each parish, the impediment of clandestine marriages would not have been introduced there; for, as has been shown above, the Tridentine decree was promulgated not as a law of the Council, but as his own statute. From this, it is easily deduced that doubts arose in the 17th century concerning the value of the promulgation of Chapter Tametsi in the archdiocese of Moguntina; and rightly and with wise counsel, Archbishop Ioannes Philippus de Schoenborn prescribed a new promulgation of the Tridentine decree in the year 1664. The first argument, drawn from the alleged evidence, seems easily deducible to support the assertion of the promulgation of the Tridentine decree in the parish of Francofurt. Indeed, in the consistorial decree of the year 1664, a new promulgation of the Tridentine decree against clandestine marriages is prescribed throughout the entire diocese of Moguntina, as is evident from the tenor of the decree and from the manner of acting of the pastors and the commissary of Aschaffenburg in the documents presented. Certainly, this new promulgation, prescribed without any restriction, is rightly presumed to have been made also in the parish of Francofurt, although there is no written document to prove it. And to claim that the general statute of the Archbishop of Moguntina was not fulfilled in that parish would be to fabricate, not to prove; but the arguments that are presented by those holding the contrary opinion are mere conjectures, devoid of all value, and completely ineffective in refuting the presumption. They say that no document of publication can be found in the parish archive of Francofurt. I readily concede that no written document exists. But what of that? Can the promulgation of Chapter Tametsi be proven solely by written documents? It is known to be utterly false,

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because...

[*Latin ed. p. 660*]

660 LIMBURGEN. The doctrine of the canonists on this matter is well known, cf. Schmalzgrueber I. IV, title 3, no. 100, and the repeated declarations of the Sacred Congregation of the Council. Furthermore, it is observed that the permission for the publication of the decree of the Council of Trent by the magistrate of Frankfurt was clearly contrary to the diminution of ecclesiastical jurisdiction. However, these are conjectures, not historical facts. Indeed, it is certain that the decree of Archbishop Daniel, issued in the year 1582, was promulgated in the parish of Frankfurt, as can be read in the very ancient register of marriages and baptisms of that parish. From this, it is clear that the parish priest of Frankfurt at that time was far from being overly concerned about the fear of the Protestants. It is also easily explained why there is no document concerning the promulgation of this decree in the year 1664. Indeed, as can be seen from the very ancient register of marriages and baptisms in the parish of Frankfurt, the regulations concerning the celebration of marriages, which had been established by the Council of Trent, were observed in practice from at least the year 1640. Therefore, the parish priest may have preferred a simpler method than a more solemn promulgation in the year 1664, in order not to arouse the hatred of the Protestants. Finally, it is objected that in the year 1664, the decree published was not the decree of the Council of Trent, but only the decree of the Archdiocesan Consistory of July 10th of that year; however, the publication of this decree does not equate to the publication of the decree of the Council of Trent, since it is required that the content of this decree, at least in its essential parts, be published in a language understandable to the faithful; whereas, that decree of the Consistory does not contain such content. This is clearly false to anyone reading the decree of the Consistory. For the Council of Trent expressly states: "Concerning these matters, according to the Council of Trent, the faithful ought to live." But these words, concerning these matters, refer to what immediately precedes, namely, to matrimonial causes and clandestine marriages. Furthermore, the Archbishop of Mainz was speaking to sane-minded pastors who knew perfectly well what had been established by the Council of Trent concerning clandestine marriages, and how well the Most Reverend Prelate was understood by his pastors is evidenced by numerous documents that could be cited. Another argument is added, namely, that the same promulgation is unconditionally approved in the parish of Frankfurt. For it is an unshakeable principle of canon law that the decree of the Council of Trent is presumed to have been published, where that decree has been in force for some time.

[*Latin ed. p. 661*]

LIMBURG. It is observed in the parish, as a decree of the Council of

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Trent. "This principle was established by the Sacred Congregation of the Council on September 26, 1602, and repeatedly confirmed on July 10, 1610, on December 16, 1634, on November 13, 1638, and on March 30, 1669. See Benedict XIV, *De Synodo et Diocesi*, Book I, Chapter XII, section 5, number 6, and the letter of Pope Pius VI to the Bishops of Luconia, dated May 28, 1793. Moreover, a long series of facts clearly demonstrates in the parish of Frankfurt that the decree of the Council of Trent, concerning clandestine marriages, has been observed, so that the decree of the Council of Trent has been observed. This is also confirmed by particular facts; for it is evident from the parish register of Frankfurt that some, moved by the goads of conscience, wished to enter into marriage according to the form of Trent, having contracted it before a Protestant minister. The Most Reverend Bishop of Limburg, in his supplication, does not offer further examples by which he might prove the observance of the decree of Trent in the parish of Frankfurt up to our time, but he seems to consider it as certain and unquestionable, and indirectly confirms it through two witnesses of the highest standing. These are Dr. Maufang, a canon of Mainz, and Dr. Braun, a canon of Fulda, both highly learned in canon law. A third argument can be added to confirm our opinion. The promulgation of the *Tametsi* canon, although it is not only presumed by long-standing practice and observance, both by presumption of law and by law itself, but also the promulgation of that canon can be effected by practice and custom. See *Archivum Juris Ecclesiastici*, volume 33, pages 169 and following. For the Sacred Congregation of the Council, in the Bosnian case, dated April 14, 1661, responded: "Furthermore, concerning those who have contracted marriages without the form [prescribed], it is answered that, if in that region the decree of the Council, chapter 1, session 24, *De Reformatione Matrimonii*, is customarily observed, there are no marriages in which the parish priest has not been consulted." Indeed, in this response, the Sacred Congregation of the Council seems to hold that the observance of the *Tametsi* canon rests solely on custom, and does not mention explicit promulgation. Nevertheless, marriages celebrated without the Tridentine form are not declared null, but rather, "there are none," therefore, the Sacred Congregation of the Council itself considered that the law of Trent had been sufficiently promulgated by practice and custom. For the *Tametsi* canon has no real force in a parish without some true promulgation, but if that Tridentine law is not in force, clandestine marriages are not invalid, but are considered valid according to ancient law. Therefore, the Sacred Congregation of the Council...

[*Latin ed. p. 662*]

662 LIMBURGEN. declares marriages to be invalid, stating that "publication is presumed" and that if it is public, it is converted. This can also be inferred from the response of the Sacred Congregation of the Coun-

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cil, dated March 27, 1632: "Where it is established that the decree of the Holy Council has been published, or has been observed for some time in a parish as a decree of the Holy Council...". In this response, that particle "or" equates the observation of the decree as a decree of the Council with true and express promulgation. Furthermore, a similar equation occurs in the letter of Pius VII to the Archbishop of Moguntinum, dated October 8, 1803: "Your Fraternity well knows that marriages of this kind are valid and firm in those places where the decree of the Council of Trent has either never been promulgated, or has never been observed as a decree of the same Council, or if it has been observed at some time, it has since lapsed into disuse for a long period of time." Thus, the Holy Father, in the aforementioned letter, explicitly concedes that the Tridentine sanction against clandestine marriages can, at least for a long period of time, be abrogated by contrary custom in a particular parish; much more so, by a custom supremely conforming to the law, the promulgation of Chapter Tametsi can be effected. Finally, this opinion can be confirmed from the Council of Trent itself. Indeed, the Fathers of the Council of Trent, while directly prescribing an express promulgation of Chapter Tametsi, did not exclude the other form of tacit promulgation through practice and observance of that decree, but rather, they left a great deal of freedom to the Bishops regarding the manner of promulgation. Thus, it can be done by reading the decree publicly in the church, but also by simply affixing it to the doors of the church. But just as the law can be established both in writing and by custom, so too, the promulgation of a law issued by a competent authority, whether expressly or through practice, is not prohibited by law. Custom itself is the best promulgation of laws; therefore, in order to introduce customary law, promulgation, which is otherwise entirely necessary for the validity of the law, does not require a special reason, since it is contained in the custom itself. Therefore, since the words of the Council of Trent do not preclude this mode of promulgation of Chapter Tametsi, it is also approved by the Council itself. This reasoning is confirmed by the decisions already cited of the Sacred Congregation of the Council, in which both modes of promulgation are clearly equated; but no trace is found of the Sacred Congregation giving those responses an extended interpretation of the Council.

[*Latin ed. p. 663*]

LIMBURGEN. 663. The matter, therefore, in the Council of Trent having already been clearly and explicitly proposed through legitimate interpretation, it cannot be denied that, from this, it follows that valid clandestine marriages no longer exist in England and Scotland. Indeed, good Catholics celebrate their marriages before a priest and at least two witnesses; but the faithful know that this form of celebrating marriage is not required for the validity of the act in England and Scotland; therefore, there is no neces-

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sity, which is entirely necessary for introducing a custom. Furthermore, the Bishops do not intend, by this practice and observance, to promulgate any decree. However, as it is known from elsewhere, the praised decree of Trent cannot be validly promulgated, not by the private authority of the parish priests, but only by the mandate and consent of the Bishops. Finally, this observance does not take effect by virtue of the decree of Trent, but rather because of diocesan statutes and the custom received in England, or rather, because of an ancient law in England and Scotland, never abrogated, which, while not requiring the validity of marriage, certainly requires a public celebration of the marriage before the Church. Therefore, lacking the essential conditions, the promulgation of the decree concerning clandestine marriages in England and Scotland, as if made through observance, cannot be asserted. With these things established in law, the facts alleged in the petition must be added, by which it is proven that the practice and observance legitimately promulgated the decree of Trent against clandestine marriages. This practice and observance are best deduced from the diocesan rituals. For the Sacred Congregation of the Council, in the case of Constantinople, on December 16, 1634, judged: "That the observance of the Roman Ritual concerning the Sacrament of Marriage in each parish of the Kingdom of Persia is sufficient presumption of the publication of the same decree, so that in the celebration of marriages, the form prescribed by the same Holy Council must be observed for the sake of its validity." Indeed, as has been proven above, the Sacred Congregation of the Council presumes publication from the observance of this decree, which means that publication has truly been made through observance, and there can be no doubt that in the rituals of the Archdiocese of Mainz, in which the parish of Frankfurt was located, the observance of the decree of Trent concerning the form of celebrating marriages was most carefully prescribed. This fact is learned from the report of the same Bishop of Limburg.

[*Latin ed. p. 664*]

664 LIMBURG. Furthermore, as I demonstrated in the second argument, in the parish of Frankfurt, the practice was in conformity with the diocesan ritual, and this was for the purpose of observing the decree of the Council of Trent and avoiding the nullity of marriage. RESPONSE TO DOUBT II. Concerning the decree of Trent against clandestine marriages, it applies to Catholic spouses in the village of Bornheim in the same manner and with the same scope as in the parish of Frankfurt; but since, according to the facts alleged in the petition, the promulgation of the chapter [of the ritual] is not as certain and evident in that village as in the parish of Frankfurt, the Most Reverend Bishop of Limburg, not out of strict necessity, but to dispel scruples and remove unfounded doubts, rightly makes use of the burdensome law granted by the Council of Trent – Session XXIV, chapter 1, concerning the reform of marriages, with these words: "Lest these most

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salutary precepts should escape anyone, the Ordinaries are commanded to see to it that, as soon as they can, this decree be made public and explained in each of the parochial churches of their dioceses, and this should be done first and most frequently, and then as often as they deem it expedient." The village of Bornheim, in our time, is connected to the city of Frankfurt for civil administration; before the Reformation of the sixteenth century, it was located outside the walls of the city of Frankfurt. Therefore, some contend that Bornheim, like other villages located outside the walls of Frankfurt, had its own parish. But this is not proven by historical documents. In other ancient documents, the Church of Bornheim is called a chapel. However, even from these documents, it cannot be deduced whether this church was a true parish before the Reformation; rather, it appears more likely that the chapel of Bornheim was a filial church administered by the parochial clergy of Frankfurt. In any case, I believe that it is not necessary to insist too much on these questions regarding whether a distinct or incorporated parish existed in the village of Bornheim before the Reformation in this controversy. For the solution of the canonical question cannot depend on historical conjectures and unproven facts. Moreover, no arguments are presented in the petition that conclusively demonstrate that Bornheim was a proper and distinct parish before the Reformation. Furthermore, even if it were granted that Bornheim was a proper parish before the pseudo-Reformation, it does not necessarily follow that...

[*Latin ed. p. 665*]

LIMBURGEN. 665. The Catholics of Bornheim are not subject to the Tridentine law concerning clandestine marriages, because the Tridentine Council did not apply to them. Indeed, the entire parish of Bornheim had already experienced an apostasy from the Catholic faith, and its territory was subsequently united with the parish of Frankfurt after the Reformation. However, does a certain historical document confirm the promulgation of Canon Tametsi even in the parish of Frankfurt? Nevertheless, this promulgation is certain and undeniable. And indeed, a time-honored custom certainly suffices to establish the boundaries of parishes, if there are doubts (cf. 4 D. de parodi., III, 29) and Schmalzgrueber, (Ius ecclesiasticum universum, vol. III, p. 29, no. 24), and certainly, in this case, the boundaries were at least doubtful, since all historical facts rather indicate that Bornheim was already part of the parish of Frankfurt before the Reformation, and that from time immemorial until the year 1869, the clergy of the parish of Frankfurt were responsible for the care of souls in the village of Bornheim. This, without a doubt, occurred with the consent of legitimate ecclesiastical authority, and this care was not exercised beyond the proper territorial boundaries of the parish. On the other hand, if it were certainly established that the village of Bornheim was already part of the parish of Frankfurt before the Reformation, it would be easier to accept

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as legitimate the conclusion that Canon Tametsi was also to be observed in the village of Bornheim. For if it is certainly established that the boundaries of a parish exist through prescription, then a change in those boundaries cannot be introduced, as is stated in Canon 4, D. de parodi., III, 29, and Schmalzgrueber (loc. cit. nos. 22 and 23). Furthermore, the Tridentine law concerning clandestine marriages applies to the inhabitants of a parish by reason of territory; therefore, if Bornheim had always certainly been part of the parish of Frankfurt, then the Catholics of Bornheim would, by Canon Tametsi, be bound in the same way as the Catholics of the city of Frankfurt. And indeed, a certain territory is not separated from a parish simply because the inhabitants of that territory have defected from the Catholic faith; otherwise, the boundaries of the ancient dioceses of Germany would have been changed by the Reformation, and thus, in the same city, certain areas whose inhabitants, having abandoned the Catholic faith, had converted to the Lutheran sect, could have been separated from the territory of the Catholic parish, so that Catholics living there later would have been outside the parish. This is something that no one would say. Therefore, if the village of Bornheim was part of the parish of Frankfurt, the promulgation of Canon Tametsi there, whether expressly or through constant observance, would certainly suffice for the village of Bornheim. What is added about the "unobserved" Tridentine decree in the village of Boni -

[*Latin ed. p. 666*]

666 LIMBURGEN. It is certainly true of Protestants, but it would need to be demonstrated concerning Catholics, since it is beyond dispute that Protestants in the city of Frankfurt and the village of Bornheim were not subject to the impediment of clandestine marriages; but in the very petition it is asserted that the Catholic religion in the village of Bornheim at the end of the 16th century had almost disappeared, so that "hardly any Catholics could be found there." But since Catholics were not present in Bornheim, they could not have violated the observance of the decree of Trent. However, if, after many years, Catholics migrated again to this part of the parish, which until then had been inhabited only by heretics, they would undoubtedly be bound by the law of Trent, just as Catholics in the city of Rome, who seek a home in the now-destroyed Jewish quarter, are entirely subject to the sanctions of the *Capitula Tametsi*, although perhaps for many centuries, people devoted to the Catholic religion rarely lived in that ghetto. Therefore, it seems entirely correct to hold that Catholics in the village of Bornheim in our time are obligated to observe the Tridentine form in celebrating marriages. The proof of this assertion can be presented after the explanation already given with two brief arguments. 1. It is certain and undeniable that in all places subject to the jurisdiction of the Archbishop of Mainz in the year 1664, the decree of Trent, annulling clandestine mar-

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riages, was duly promulgated. And indeed, if, after so many acts and decrees, the *Capitula Tametsi* had not been promulgated in the Archdiocese of Mainz in 1664, it would truly be remarkable. It is certain that the village of Bornheim was once subject to the jurisdiction of the Archbishops of Mainz, and there is no evidence that Bornheim existed outside the territory of a Catholic parish; therefore, it is a very strong presumption that even the Catholics of Bornheim were bound by the decree of Trent. 2. Until the year 1869, Bornheim was part of the parish of Frankfurt. The facts cited above already suggest this with great probability, or even before the Reformation; and the constant custom maintained for at least three centuries removes all doubt, as has been proven. Indeed, in the parish of Frankfurt, the *Capitula Tametsi* has been observed with certainty and without doubt from time immemorial, so it is surprising how any doubt could have arisen about this matter. Therefore, the Catholic inhabitants of Bornheim are also bound by the same law. In opposition to the answer given above, this objection is raised: "In addition, the Apostolic Vicar for the Duchy of Nassau and the territory of Frankfurt, in the case of Charles Christian..."

[*Latin ed. p. 667*]

LIMBURG. On July 6th and 7th, the court declared against Guilelmina, born on May 13th, 1824, and again on July 5th, 1825, that in the place of Bornheim, the decree of the Council of Trent concerning clandestine marriages is not to be accepted. This difficulty appears to be solvable with a suitable response. The decision of that Apostolic Vicar was a ruling given in a particular case, and there is no argument to prove that he investigated the general question with as much care and diligence as it appears that the Most Reverend Bishop of Limburg, who was in office at the time, did, as is evident from his petition. Therefore, it is not surprising that a departure from the decision of the Apostolic Vicar is now necessary. In a similar manner, Benedict XIV rejected certain responses given by the Sacred Congregation of the Council in particular cases on November 4th, 1741, stating: "Although His Holiness is aware that, in certain particular cases and with the circumstances then presented, the Sacred Congregation of the Council has responded regarding the invalidity of such marriages, nevertheless, having also ascertained that nothing has yet been definitively and universally decided by the Apostolic See regarding such marriages, and that it is necessary to declare what should be generally understood about these marriages, He has decided that marriages should be considered valid." Furthermore, the Most Reverend Bishop of Limburg himself, in his petition, sufficiently demonstrates that the decision of the Apostolic Vicar does not resolve the matter; otherwise, he would not have appealed to the Apostolic See. With this appeal, he also wisely suggests and confirms that neither he nor the Apostolic Vicar were endowed with the competent authority to define the general question of law in this matter with an authentic interpre-

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tation. For although Bishops, by mandate of the Council of Trent, can not only promulgate, but must promulgate the *Tametsi*, and, having made a new promulgation, can easily resolve doubts for the future, they cannot proceed by means of interpretation in this matter. Bishops, with regard to the decree of Trent which invalidates clandestine marriages, only fulfill the ministry of promulgating a law laid down by a higher authority; they are not, in any way, legislators. Therefore, if they were to resolve doubts about the validity of the promulgation arising from their interpretation, it would be a simple matter to either abolish the Tridentine law with a restrictive interpretation, or to invalidate the *Tametsi* with an expansive interpretation, neglecting the conditions required by law. But both of these possibilities exceed the power of the Bishops, and therefore, recourse must be had to the Apostolic See, in order to resolve...

[*Latin ed. p. 668*]

668 LIMBURG. There arise general doubts concerning the validity of the promulgation, as mentioned in chapter [reference missing]. Although it is a question of either the abrogation through desuetude. The force and authority of the praised decree of the Apostolic Vicar are diminished to no small extent, because it is only the repeated decision of a single tribunal, and not a double, concordant judgment of different tribunals, as required by the constitution of Benedict XIV, "Dei miseratione," in matters of nullity of marriage. Finally, although it may be conceded that the Apostolic Vicar did not err in his time, it does not necessarily follow that, in our age, the Catholic inhabitants of the village of Bornheim are exempt from the law of Trent concerning marriages to be celebrated. For after that year, 1825, the decree could be promulgated through practice and observance, and the Sacred Congregation, as is evident from the declarations given in the first response, does not require a very long, and therefore, an almost unmemorable, period to presume the promulgation of the praised decree, but it suffices if, at some time, it was observed as if it were a decree of the Council of Trent. However, the Catholic inhabitants of the village of Bornheim were, until the year 1869, considered to belong to the parish of Frankfurt, in which the decree of Trent was observed. Therefore, that practice and observance also constitute a legitimate presumption of promulgation in our age, with the best of right.

RESPONSE TO DOUBT III. "Catholics who, previously, contracted marriage clandestinely in the parishes of Frankfurt and Bornheim, and who still live there without doubt, if both parties present themselves in the ecclesiastical forum, or if one party can be easily induced to do so, they shall renew their consent secretly before the parish priest and two witnesses, in the Tridentine form; if only one party presents itself, and the other party refuses to do so, the Most Reverend Bishop of Limburg shall have the power to validate such marriages in their root, according to the faculty granted

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on December 4, 1886, by the Most Holy Bishops of Austria; if neither party presents itself, and there is no hope that they will be warned to do so, they shall be left in their good or bad faith, according to chapter 6, D. De consang. et affin., IV, 14."

Since clandestine marriages in both parishes are certainly invalid, according to the force of the two previous responses, the general principles concerning the validation of marriages, due to the lack of the Tridentine form, must be applied to marriages contracted invalidly. These principles are... [text incomplete].

[*Latin ed. p. 669*]

LIMBURG. In the third instance, a brief account was presented. Therefore, it could also be answered: "Regarding the validity of marriages, it is advisable to consult approved authors." A public renewal of consent does not seem to be required. For if Bishops, in provincial councils, considered it necessary to abstain from the strict precept of celebrating marriages in the church, but were content with exhortations (cf. Collect. Lac. conc. recent, vol. III, p. 316, 319, 1262), then certainly, much more so does this apply to the case in question. These discussions among learned men could easily have achieved at least this: that scandal be avoided. Therefore, it is necessary only to consider the tranquility of consciences, to which a private renewal of consent before the parish priest and two witnesses is abundantly sufficient. In order that the Reverend Bishop may not be compelled to recur to the Apostolic See, it seems fitting to grant him immediately the faculty of healing those marriages at the root, as was granted to the Bishops of Austria to heal marriages invalidly contracted due to the non-disclosure of an incestuous relationship when requesting a dispensation, before the necessity of disclosing the relationship was removed by the Holy See on June 25, 1885. This case seems very similar to ours. For in that question as well, learned men raised doubts about the necessity of disclosing the relationship, and consequently, marriages celebrated without that condition were considered valid. Although this opinion, considered in relation to the law, may have been worthy of consideration, it could not be applied in practice, given the established law and the declarations of the Sacred Congregations. Therefore, if the Holy See, despite the reasons given by the learned men who were of the opinion that those marriages were valid, nevertheless granted a healing at the root, the same seems to be granted to the Reverend Bishop of Limburg, with the same stipulations, namely, if the renewal of consent cannot be carried out without serious danger or scandal, and if at least one party to the marriage acknowledges the nullity and appeals to the Church, while the marital consent perseveres. (Cf. Archiv. iur. eccles., vol. 58, p. 351). Furthermore, that the faithful may sometimes be left "in good faith" can also be confirmed, apart from the aforementioned principle of canon law, from the response given by the Sacred Congregation on

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December 14, 1853: "Marriages celebrated before priests who do not have the jurisdiction of the respective Apostolic Vicariate are considered null. Regarding marriages contracted in good faith, nothing is said, and if any doubt arises, it should be reported." (Cf. Collectanea const. S. Sedis, no. 996).

[*Latin ed. p. 670*]

670 LIMBURG. RESPONSE TO QUESTION IV. Although this question seems sufficiently answered by the preceding responses, it appears that it can be answered more explicitly in this way: "In the parish of Frankfurt, the Tridentine law concerning clandestine marriages, having been certainly promulgated, does not require a new promulgation in order to again have force in that parish; rather, the promulgation that is made solely for the purpose of being observed is left to the prudent judgment of the Bishop of Limburg, according to the words of chapter [citation needed] of the Council of Trent. However, in the parish of Bornheim, although it is advisable to refrain from a solemn promulgation, for the sake of greater security, it is advisable that Catholic faithful be simply informed that marriages clandestinely celebrated by Catholics are entirely null and void according to the Tridentine law." This response, being merely a corollary deduced from the preceding responses, scarcely requires much confirmation. For if the Tridentine law against clandestine marriages has been certainly promulgated, a new promulgation is certainly not necessary. Therefore, the question can only arise concerning that promulgation, which is more appropriately called a dissemination, and which follows the law already established, in order that its perfect knowledge may be preserved and increased among the people. To achieve this end, the Council of Trent, in chapter [citation needed], states: "And this should be done most frequently in the first year, and then as often as it may seem expedient." Therefore, the matter is left to the prudent judgment of the Bishop, and there is no reason to deviate from this rule. Furthermore, in the parish of Bornheim, I do not believe that it is necessary to proceed with a solemn promulgation, both because a certain level of promulgation is to be assumed, and in order that it may not appear that something new and unusual is being introduced, nor that the Protestants may have an opportunity to slander the Catholics, as happened in the city of Berlin, when [citation needed] was promulgated. However, a simple promulgation, for example, if, along with other impediments, this impediment of clandestinity is also brought to mind on a given occasion, does not seem to be useless, because the actions in the alleged case do not so clearly demonstrate that a promulgation has been made, that all scruples are sufficiently eliminated. But if someone were to doubt that [citation needed] is in force in the town of Bornheim, I would immediately advise that a new and formal promulgation of that decree be made there. In this case, the Reverend Bishop of Limburg would have the same right to act as

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the Archbishop of Mainz in the year 1664, due to doubts that arose in...

[*Latin ed. p. 671*]

LIMBURGEN. He has ordered that the entire diocese promulgate the Tametsi decree, yet he does not consider it necessary to obtain the required permission from the Holy See to accomplish this. Nor is it to be thought that bishops in our time are bound by this matter, and that a special permission from the Holy See is required. For although the mandate of the Council of Trent to promulgate the Tametsi decree applies most directly and immediately to the bishops of that time, future bishops are not excluded, but are included by the words of the Council. Therefore, bishops can, and indeed must, promulgate the Tametsi decree in their dioceses, provided that the prescribed conditions are observed, and certainly no permission is required from the Holy See for that which anyone is strictly obligated to do. Hence, just as bishops should not seek permission from the Holy See in order to be able to celebrate provincial councils every three years, according to the decrees of Trent, but rather should inform the Holy See of the reasons why the law of Trent concerning the holding of provincial councils has not been followed, so in this matter, bishops in relation to the existing circumstances should explain the reasons for the omission of the promulgation of the Tametsi decree. Such reasons may certainly exist, and are approved by the Holy See. (Cf. e.g. the letter of the Sacred Congregation of the Propagation of the Faith, dated June 23, 1830, in the collection cited, no. 994). But such reasons do not seem to exist for omitting the promulgation of the Tametsi decree in the town of Bornheim, or even in the city of Frankfurt, at least for Catholics. It is certainly not a singular privilege if a certain parish is exempt from the law of Trent. For it remains under the ancient law, which has many inconveniences, and which, due to human disobedience, and due to the grave sins that have arisen from those same clandestine marriages, was corrected with great care and wisdom by the Council of Trent. Indeed, if the Tametsi decree could be promulgated in the city of Berlin in recent years, and if, with the approval of Pius VII, on January 14, 1821, the Sacred Congregation of the Propagation of the Faith judged that the vicars apostolic in the Empire of China should, as far as possible, take care to properly promulgate the entire decree of the Council, then surely the Catholics of Bornheim or Frankfurt are not in a worse condition than the Catholics of Berlin, and indeed the Chinese. To this is added the need to promote uniformity in discipline within the same diocese. This uniformity was the main reason why, for example, in the vast diocese of Breslau, a new regulation was introduced in some places regarding the form to be observed in celebrating marriages. With these

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considerations in mind, the proposed measures should be reconsidered.

[*Latin ed. p. 672*]

672 LIMBURGEN. Doubts I. Whether the decree of the Council of Trent, Session XXII, chapter 1, concerning the reform of marriage, which invalidates clandestine marriages, obliges the faithful residing in Frankfurt, either by force of publication or by force of long-standing observance, so that marriages there, not celebrated according to the Tridentine form, are to be considered null and void for Catholics in that case.

I I. Whether the aforementioned decree also binds Catholic betrothed residing in the place of Bornheim in that case. And as to both, affirmatively.

I I I. What is to be done with regard to those Catholics in Frankfurt and Bornheim who, having previously entered into clandestine marriages, and still not doubting their validity, live together in that state. And as to both 1 and 2, negatively.

I V. Whether the same decree is to be published there, without prejudice to the validity of marriages contracted between non-Catholics or between Catholics and Protestants.

RESOLUTION. The Sacred Congregation of the Council, having knowledge of the matter on January 1, 1889, decided to respond as follows:

To I and II: It is established that the faithful residing in Frankfurt and Bornheim are bound by the law of Trent concerning clandestine marriages.

To III and IV: In the opinion of the consulter.

FROM WHICH WE GATHER:

I. That, although the decree of Trent is in force, in any place where it is in force, marriages between Catholics begun there are not to be considered invalid, unless they were celebrated before the proper parish priest and two witnesses.

II. That this law of Trent does not bind in the celebration of marriages, unless both parties are attached to the Catholic religion; therefore, mixed marriages or those contracted by Protestants among themselves are not subject to this law, because the Council did not extend its decree to those marriages; Benedict XIV, Constitution *Singulari nobis*, and in the book *De Synodo dioec.*, book IV, chapter 6, number 12.

III. That, with regard to proving the existence of a particular marriage, it must be shown that the decree of Trent has been published, either by explicit and express words, or by long-standing observance among Catholics as a decree of Trent; nor if, at one time, it was observed, that it has since lapsed into desuetude after a long interval.

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I V. After the declaration of the S. C. C. was confirmed by Urban VIII.

[*Latin ed. p. 673*]

LIMBURG. 673, from Benedict XIV, *De Synodo Dioec.*, book 12, chapter 8, paragraphs 5 and following. It is certain that no promulgation of the *Tametsi* canon is valid, unless it is made as if it were a law enacted by the Council of Trent. V. It is certain, according to the well-known teaching of canonists and the resolutions of the Sacred Congregation of the Council, that the promulgation of the *Tametsi* canon in a certain place can be proven not only through written documents, but also through presumption; for it is presumed that publication has occurred when a decree has been observed in a parish for some time as if it were a decree of Trent; Schmalzgrueber, book 4, title 3, paragraph 100. VI. Indeed, the long-standing observance of the *Tametsi* canon, even without presuming its promulgation, means that the same promulgation can be lawfully derived from practice and long-standing custom, according to the resolutions of the aforementioned Sacred Congregation; from the letter of Pius VII to the Archbishop of Mainz, October 8, 1803. (1) Because in that custom, the law is contained, and its publication is not to be presumed, but rather is to be considered certain. VII. However, in England and Scotland, where the Council of Trent was not promulgated, it cannot be maintained that the *Tametsi* canon was promulgated through the laudable custom by which good Catholics enter into marriage before parish priests and two witnesses; because the Bishops, by whose mandate the promulgation of the Council of Trent must be made, do not understand that any promulgation of the *Tametsi* canon is made through that practice, which pertains more to the licitness than to the validity of marriages. VIII. The observance of the Roman ritual for the Sacrament of Matrimony in each parish of the Diocese, observed as if it were a decree of the Holy Council or the Supreme Pontiff, provides sufficient presumption of the publication of that same decree, so that the same decree must be observed in marriages for their validity. IX. The law of Trent, which invalidates clandestine marriages, affects the inhabitants of the parish by reason of territory; and a part of the territory is not separated from the parish because the inhabitants of that part have defected from the Catholic religion; and therefore, if Catholics return to that part, they are bound by the law of Trent; just as Catholics would be bound in Rome who established a domicile in the Jewish ghetto. X. It pertains to the Apostolic See to resolve general doubts about the validity of the promulgation of the *Tametsi* canon, or about its abrogation. (1) It may be considered that the practice and custom of a decade are sufficient for the promulgation of this law of Trent, already enacted; because this custom is in accordance with the law and is congruent with the law. And this is all the more so, since Reiffenstuel, book 4, title 3, paragraph 119, believes that the decree of Trent, which invalidates clandestine marriages,

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can, despite legitimate promulgation, fall into desuetude within a decade through contrary usage. Acts, Volume XXI, page 43.

[*Latin ed. p. 674*]

674 LIMBURGEN. The validity of this [decree] is questioned due to its customary application; however, the promulgation of this same decree pertains to the Bishops; and doubts, if they arise, should be resolved for the future through a new promulgation, and certainly not through an interpretation, which in general matters surpasses the authority of those [Bishops]. XL. Marriages celebrated within the diocese by Catholics before a Protestant minister are considered invalid, because the publication of the decree [Tametsi] was made, whether expressly and with clear words, or through an unforgettable custom. XI. Marriages rendered invalid due to a defect in form in Trent can be validated if both parties appear before the parish priest and two witnesses, and secretly renew their consent; or, if one party refuses to appear, the Bishop should be granted the power to validate the marriage at its root.

NOTE. The presentation of this matter has provided an opportunity to present to the readers a catalog of places where the publication of the decree [Tametsi] was made. It would be most welcome if time permitted to undertake such a work of great importance. To properly accomplish this, a lengthy and diligent investigation would be required in the archives of the Holy Congregations in Rome. I refrain from presenting other catalogs, already published, because they have often been arranged with too little care, and are frequently the cause of more confusion than order and clarity in matters concerning clandestine marriages.

CONIMBRICA. UNIVERSITY. July 18, 1888. Session 25, chapter 2, on Reform.

SUMMARY OF THE MATTER. The Bishop of Coimbra and the editors of the religious periodical *Institutiones Christianae* recently presented in *S. O. G.* [presumably a publication] a controversy that has arisen, especially in this diocese and in the Kingdom of Lusitania, among writers concerning the interpretation of the following text from the Holy Council of Trent, session 25, chapter 2, on reform, at the end: "Those who are appointed for the visitation of dioceses and universities should receive the canons and decrees of this Holy Synod, and the Catholic prelates, with due diligence, should take care that these are observed in their dioceses, and that the masters and students of universities observe them."

[*Latin ed. p. 675*]

CONIMBRICA. 675 Doctores et alii in hisdem universitatis ea, quae Catholicae Fidei sunt, doceant et interpretentur; et se ad hoc institutum initio cuiuslibet anni solemni iuramento obstringant: sed et si aliqua alia in praedictis universitatis correctione et reformatione digna fuerint,

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ab eisdem ad quos spectat, pro religionis et disciplinae ecclesiasticae augumento emendentur et statuantur. Quae vero universitates immediate Stemmi Romani Pontificis protectioni et visitationi sunt subiectae, has Sua Beatitudo per eius delegatos eadem, qua supra, ratione, et prout ei utilius visum fuerit, salubriter visitari et reformari curabit. » Discrepantia sententiarum circa huius textus interpretationem magnum parit detrimentum et scandalum apud fideles. Ut igitur veritas clare pateat ac tuto et efficaciter defendi possit, dubiorum, in calce relatorum, solutionem «oratores humiliter expostulant». Disceptatio Synoptica. Animadversum ex officio fuit, quaestionem agendam hanc esse, utrum scilicet in universitate quae ad statum civilem pertinet, quae proinde visitationi et reformationi status subest, cura, ut omnia juxta decreta Tridentina tradantur, correctio pro religionis et ecclesiasticae disciplinae augmento a Tridentino commendata, ipsumque demum supremum officium integritatis fidei curandae, ad statum spectent: et quomodo, idest directene et exclusive. Atque ita tria priora dubia absolvuntur. In 4. vero et 5. dubio speciales et subordinatae quaestiones proponuntur: scilicet 4., in hypothesi quod ad statum non pertineat superintendentia doctrinalis, quatenus haec importat officium integritatis fidei curandae, utrum haec ad Episcopum loci etiam quoad universitates pertineat: - exemptae enim forte supponuntur universitates - ; 5. utrum Episcopus per se et immediate possit doctorem universitatis censura multare seu admonere de errore, in universitate tradito, aut in scriptis ab eo evulgato: -

[*Latin ed. p. 676*]

676 CONIMBRICA. It is perhaps the case that certain individuals are exempt from the ordinary jurisdiction of the Bishop. WHICH SEEMS TO FAVOR THE POSITION. It cannot be doubted that the proponents of this position primarily favor the literal meaning of the law. Indeed, in the cited passage, chapter 2, session 25 of the Council of Trent, it does not explicitly address Bishops, but rather all those to whom the general care, visitation, and reformation of universities and studies pertain. Therefore, in the hypothesis that universities are dependent on the state and the King, as is the case in the proposed situation, it is clear that the warning of Trent is directed to the state and the King, and not to the Bishops. Nor does it matter that the matter in question concerns ecclesiastical and religious affairs, and the care for the preservation of the faith. For "it pertains to the office of the King to provide for the good of the life of the people, insofar as it is fitting for attaining heavenly beatitude, so that he may discern what leads to heavenly beatitude, and, as far as possible, forbid what is contrary to it." Author on the governance of principalities, book 1, chapter 15. Indeed, "in the governance of the legislator, one must always strive to guide citizens to live according to virtue." Ibid., book 3, chapter 3. Therefore, the Prince must always and everywhere be vigilant, so that the faith may be preserved in

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his kingdom, lest unsuspecting errors deceive, and citizens be perverted by impious and immoral doctrines. Thus, Saint Leo addressed Leo Augustus in epistle 125, also 75: "You must diligently consider that royal power has been conferred upon you not only for the governance of the world, but especially for the protection of the Church, so that you may restrain the daring and wicked, and defend what is well established, and restore true peace to those who disturb it." And likewise, Saint Gregory the Great wrote to Emperor Maurice in book 2, epistle 11: "For this reason, power over all men has been given to us by the Lord of Heaven, so that those who desire good may be aided, so that the way of heaven may be opened more widely, so that the earthly kingdom may serve the heavenly kingdom." Finally, it is sufficient to recall what the Council of Trent itself...

[*Latin ed. p. 677*]

CONIMBRICEN. Session 677, chapter 25, paragraph 20 states: "For there, 'it was deemed necessary to admonish even secular Princes,' trusting that, as Catholics, whom God willed to be protectors of the holy faith and of the Church, they would not only concede the restoration of their rightful place to the Church, but also would compel their subjects to render due reverence to the clergy, to parish priests, and to superiors of orders... and that, together with these very princes, they would observe the due obedience to the sacred constitutions of the Holy Pontiffs and of Councils. But if Catholic princes are constituted as guardians and defenders of the faith, it seems that nothing prevents them from exercising this office also in universities; indeed, with even greater reason and diligence, since these arenas of learning are more dangerous in the dissemination and propagation of errors, and are more dependent on civil authority. Indeed, in the hypothesis, which is always maintained, that the university is dependent on the king, it does not seem incongruous that the king's authority, with regard to correction and visitation in matters pertaining to the faith, should be direct and relate to the Ordinary in place, and exclusively. Certainly, this seems to be a privilege granted to Kings and Emperors, namely, that those things which are entrusted to them should be governed independently of the local Bishops, under the direction, however, of the supreme head of the Church. Certainly, the Council of Trident, session 22, chapter 8, after having granted to Bishops, as delegates of the Apostolic See, 'the power of visiting hospitals, colleges, and confraternities of laymen, even those which are called schools, or by whatever other name,' adds, 'not however those which are under the immediate protection of the King, without their permission.' And the reason, as Barbosa states in his collection, in chapter 27, number 27, 'is that the Council of Trent seems to have sufficient confidence in the care and solicitude of Kings, who have such hospitals under their power, and did not wish to give Bishops a reason to interfere with those foundations which the Kings have established with their own resources or

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with public funds, and which they have reserved for their own jurisdiction and immediate protection.' But with regard to the matter we are discussing, this is entirely..."

[*Latin ed. p. 678*]

678 CONIMBRICENSE. The words contained in the cited passage, namely "even those schools which they call," deserve consideration. For while it appears that, on the one hand, schools established for the education of children are subject to the visitation of Bishops, on the other hand, it is stated that these are excepted, namely "those which are under the immediate protection of the King." This is suggested by the logic of the language, and Barbosa himself seems to have understood it in this way, as cited in Collect, no. 26, where he notes regarding the word "even those schools": "The Bishop can visit all universities, except those which are under the protection of the King, as stated by Narbonne, I, 31, gloss 1, no. 5, title 7, book 1, Nov. Recompil." However, in the case of the doubts raised, the matter concerns a university which is dependent on the state, that is to say, which exists under the care, visitation, and correction of the King. Furthermore, the question specifically touches upon the University of Coimbra. This university was founded by King Dionysius before the year 1325, was expanded by John III in the first half of the 16th century, and finally received a new organization under the famous minister of the king, the Marquis de Pombal. Indeed, as Natalis Alexander states in volume VIII, *Historia Ecclesiastica, De reg. Lusit.*, article 3, no. 5, regarding Dionysius: "He erected the Academy of Coimbra, and attracted learned men from all sides with generous salaries, who taught there." And in volume LX, speaking of the King of Lusitania, John III, he adds: "He encouraged the study of literature, transferred the Academy from Lisbon to Coimbra, and increased its endowments." Regarding the reforms concerning the organization of studies carried out in the University of Coimbra by the Marquis de Pombal, through which those schools were bound more closely to the administration and control of the King, the Apostolic Nuncio speaks in his letters. Therefore, it does not seem doubtful that, in the case of the University of Coimbra, there is room for the application of the privilege in chapter 8, session 22 of the Council of Trent, whereby schools "which are under the immediate protection of the King" are exempted from the visitation of Bishops.

WHAT APPEARS TO BE OPPOSED TO THIS VIEW. But on the other hand...

[*Latin ed. p. 679*]

TO THE BISHOPS. 679. It is not without reason that the favor of the Bishops is sought. Indeed, the instruction given to the presidents of universities states that they must ensure that the decrees of Trent are received

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in the universities, and that, in accordance with their norms, which are those of the Catholic faith, instruction is given; and furthermore, that if any are worthy of amendment, these should be corrected for the sake of the advancement of religion and ecclesiastical discipline. This instruction, it seems to me, is immediately and directly addressed to the Bishops, both from the logical context of the passage, and from the historical context, and finally, from the nature or object of the precept itself.

First, from the logical context. For in chapter 2 of session 25, as the rubric of that chapter states, the words are addressed "to those from whom the decrees of the Council must be solemnly received and taught." And at the beginning of the chapter, these are expressly named: "Therefore, the Holy Synod commands Patriarchs, Primates, Archbishops, Bishops, and all others who are obliged by law or custom to attend a provincial council, etc.;" and it expressly commands all of them to accept and to ensure that they accept the canons and decrees of the Council. Then, the Holy Synod turns specifically to "those to whom the care, visitation, and reform of universities and studies pertain." Furthermore, it seems that those to whom the visitation of universities pertains are none other than the particular Bishops who have such institutions in their dioceses, according to the analogy of the words. Indeed, if the Holy Synod had wished to speak of Kings and Princes, for reasons of propriety and reverence, and also for the greater effect of the law, as it has done in other cases, it would certainly have named them expressly. Finally, the words "visitation" and "reform," and especially the word "visitation," are commonly used in reference to Bishops. Therefore, the very reason of the logical context suggests that the passage in question is addressed to the Bishops.

Secondly, this is further confirmed by the historical context. For although universities, whether founded by Princes or by private individuals, are established by their generosity, nevertheless, in the Middle Ages and even at Trent,

[*Latin ed. p. 680*]

680 CONIMBRICA. In those times, as ecclesiastical matters were concerned, and as their very nature placed them under the care and direction of the Church, the universities were subject to ecclesiastical authority. More about this matter can be found in the dissertation of Father De Robiano, O.P., *De iure ecclesiae in universitates studiorum Lovanii*, 1863, and in the dissertation of the Reverend Doctor Poiian, *De seminariis, etc.*, sect. 1, chap. 1, Louvain, 1874. Indeed, not only the ultimate authority, but the very legal institution of the universities belonged to the Church; as Iungman states in his *Dissertatio in historiam ecclesiasticam*, vol. V, dissertation 28, no. 107. And this relationship is rightly explained by the same Iungman in the aforementioned passage: "It was rightly recognized at that time by all that the Church was the guide of truth and of salvation; and since the

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universities had the primary purpose of defending the kingdom of good and truth against error and evil, and of transmitting the intellectual riches, both sacred and profane, to the people through generations, it followed that, by the very nature of the matter, the ultimate care in this regard belonged to the Church. Indeed, it is the duty and proper right of the Church to safeguard and transmit supernatural truths, or those disciplines that pertain to theology and canon law. It is true that the institutions of these disciplines first gained prominence in the universities. But also, the institutions of natural truths and disciplines are of great authority in matters of religion and morals, and according to whether they are presented as true or false, they either bring great good to men, or they lead them into great dangers to their salvation. Hence, you can see that, even in this respect, the authority of the Church and the Apostolic See corresponds to the general constitution of Christian society." But whatever may be the justice of this discipline, and even if there is a difference of opinion among historians on this particular matter, it can be proven from the facts themselves, and from the countless, both general and specific, examples, that the universities of that time received their legal existence from the Church, and either lived under the authority and direction of the Roman Pontiff, or under that of their own prelates. In this matter, it suffices to recall the academic *gradum* (degree).

[*Latin ed. p. 681*]

In Salamanca, one finds the institution, established by the Roman Pontiffs, of granting degrees, which was entirely sacred, along with numerous privileges, immunities, exemptions, and ecclesiastical benefices granted to universities by the Holy See. It should be added that within the universities, the cathedral and monastic schools, which had previously flourished greatly, were incorporated, to which were added these seminaries from the fourteenth century; one no longer finds them among the monastic communities, as Jungmann *loc. cit.* states. Indeed, the more celebrated masters hastened to the universities, where there were greater advantages for study; and likewise, all those who could, the clergy, hastened there, eager to cultivate their talents and, moreover, to enjoy a more abundant life. Consequently, it came to pass that the universities, both on account of the study of theology and other speculative disciplines, which then dominated intellectual culture, and also on account of the persons of the teachers and students, gradually acquired a more and more ecclesiastical character. Hence, it happened that the universities were often represented in councils, examined and condemned books and propositions, and undertook other tasks, which reveal not a lay person, but an ecclesiastical one. Moreover, since a great freedom and relaxation of morals had gradually crept in within the universities, to which many thousands of young people flocked, the Roman Pontiffs and the Councils strove greatly to provide for honest living,

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especially among the clergy in the universities, through laws, statutes, and the establishment of colleges. And thus, until the Council of Trent, the universities were regarded as ecclesiastical institutions. This is so true that not only does the Church regulate the spiritual aspects within them, but also the temporal and mixed aspects. One example alone may be cited: the œcumenical Council of Vienna ordered that two masters be present in the universities of Rome, Paris, Oxford, Bologna, and Salamanca, for the Hebrew, Arabic, and Chaldean languages. Only after the Council of Trent did it gradually happen that the universities were withdrawn from the direction of the Church, became secular, and passed under the authority of the state. There were two causes for this, namely, on the one hand, the restoration of the *semia*.

[*Latin ed. p. 682*]

682 CONIMBRICA. Among the dioceses, the institution of clerics was wisely revived again; and, on the other hand, there was emulation of the status and the excellence which the sciences of nature and the arts had attained in theological and philosophical disciplines. Meanwhile, what is of interest to us, and which clearly follows from what has been said so far, is that, at the time of the Council of Trent, those to whom the care of the visitation and reform of universities and general studies belonged were either the Roman Pontiff, or, if the universities were not exempt, the proper prelates of each diocese. For the princes exercised only a certain external authority, or, as they say, a kind of "police" in these matters. Therefore, by reason of the historical context, or historical circumstances, it seems justified to say that the prescription made by the Council of Trent in chapter 2, session 25, was directed only to bishops. And this is finally confirmed by considering the object of the precept. And in order that this may be clear, the matter is to be repeated more deeply, since it is a very complex matter. Indeed, according to the principles of the Catholic faith, the Church undoubtedly possesses that supreme magistracy which Christ exercised, the ministry of the word, which constituted the first and most important duty of the pastors of the Church, from which faith arises through hearing. "Go, and teach all nations," it is said to the Apostles, and in their person to all ministers of the Church; "preach the Gospel to every creature; he who believes and is baptized shall be saved, but he who does not believe shall be condemned." And likewise, they were also exhorted in the same apostolic voice: "Feed the flock of God which is among you, taking care of it, not by constraint but willingly, according to God: not for filthy lucre's sake but voluntarily." And many similar things. Moreover, this kind of magistracy consists of two parts, namely, the positive part, which is to promote religious worship, and the negative part, which is to take care that the Christian doctrine is not harmed. For no one could properly perform the office of a pastor if he allowed poisonous things to be given to his sheep

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in Werfen; nor would a minister of the Church fulfill the office of a doctor by failing to teach what is true and holy, or by neglecting to refute what is false and immoral.

[*Latin ed. p. 683*]

COMMBRICEN. 683 Both of these offices belong properly and naturally to the Church; for the one it received from its divine Founder; and the other not dependently, nor subordinately to worldly powers, but rather, indeed, whenever it is necessary, even against such powers; Matthew 10, from verse 17 to the end. Thus, the Apostles, before the council of the synagogue in Jerusalem, Acts 5, 19, 20, declared: "Whether it be right in the sight of God to hear you rather than God, judge yourselves. For we cannot but speak of those things which we have seen and heard." And the Church, following the example of the Apostles, has always professed and practiced this, as the entire sacred history testifies, from the martyrs to the present time. Indeed, this office is so proper to the Church that its pastors cannot divest themselves of it, nor can they entrust it to others, except in the highest degree of necessity, partially, and under their correction. For to the pastors of the Church has been entrusted the ministry of preaching, while to others the office of listening; Luke 10, 16; Matthew 10, 40; John 13, 20. To the pastors of the Church is attributed the charism of infallibility, and it is particularly said of them: "Behold, I am with you all days, even to the consummation of the world." Therefore, it is only to the pastors of the Church that it belongs, authoritatively and without the fear of error, to teach; it is solely theirs to vigilantly guard against the introduction of errors; it is solely theirs to propose infallibly what must be believed and practiced, and to absolutely prohibit what is false. To others, the office of obedience pertains. "It is necessary to teach the people, not to follow the people," the Fathers of the Council of Sardica proclaimed. And although Christian princes have a grave duty to protect the religion, nevertheless, as C. Tarquini excellently demonstrates in *Institutiones iuris publici ecclesiae*, § 61, no. 11, they must do so in such a way that they do not anticipate the judgments of the Church, but follow them, and indeed, do not even exceed the limits that the Church itself has prescribed for the salvation of souls. Thus, St. Facundus of Hermiana, in his *Apologia pro defensoribus trium*, book I, chapter 12, section 2, proclaimed: "Princes ought to be followers, not precursors, of the decrees of the priesthood."

[*Latin ed. p. 684*]

684 CONIMBRICA. "Et principes saeculares Ecclesiae protectores ita esse censendos, ut tamen quae ecclesiastici iuris sint tamquam Dei praecepta eiusque patrocinio tecta, eo sanctius venerentur, quo largius bonis temporalibus atque in alios potestate Dei beneficio sunt ornati," docuit Tridentinum, sess. 25, cap. 20, *De reform.* Cui apprime respondent

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quae concilium Lateranense IV protulit, cap. 4: ”Sicut volumus, ut iura clericorum non usurpent laici, ita velle debemus ne clerici iura sibi vindicent laicorum, ut quae sunt Caesaris et quae sunt Dei Deo, recta distributione reddantur.” Et si in omnibus, quae ad ecclesiasticam iurisdictionem pertinent, laicos principes non praevios sed pedissequos ecclesiasticorum praeceptorum esse oportet, hoc maxime necessarium est in rebus fidei. Nam adsistentia et divina gratia sacerdotalis status propria ad fidei depositum custodiendum, laicos omnino deficit; unde ne M. Costantini aliorumque plurimorum imperantium aberratio iteretur, a rebus fidei proponendis et interpretandis abstinere principes debent, et pastorum ecclesiae potius mandata sequi. Quando autem dicitur, magisterii officium Ecclesiae eiusque ministris reservatum existere, hoc, ceu plane patet, intelligendum est iuxta receptos iurisdictionis gradus ac modos. Unde non est dubium id muneris ad Romanum Pontificem et ad Concilia in primis spectare, sed deinde in peculiari suo districtu ad unumquemque Episcopum. Fidei enim custodiendae per vigil, ordinarius atque immediatus minister in sua dioecesi est Episcopus: unde ipsius proprium est docendi ac praedicandi munus, sess. 5, *de reform*, c. 2, sess. 23, cap. 4; ipsius est sacerdotes ad praedicandum mittere, eosque corrigere, et licet regulares atque exempti essent, ab hoc fungendo officio prohibere, Tridentinum, sess. 5, cap. 2, atque alibi: unde eosmet Episcopos in sess. 6, cap. 1, monuit esse ”ut attendentes sibi et universo gregi in quo Spiritus Sanctus eos posuit regere ecclesiam Dei, quam acquisivit sanguine suo, vigilent, sicut apostolus praecipit, in omnibus laborent, et ministerium suum impleant.” Ideo...

[*Latin ed. p. 685*]

COMMBRICEN. Six hundred and eighty-five Bishops, unless it is a matter of a particular place and persons, and a certain exemption granted, possess the immediate and exclusive jurisdiction of the Roman Pontiff, the most eminent prelate, even with regard to the subject matter, and have the right to exercise the magisterium of the faith, both positively and negatively, throughout their diocese, everywhere and concerning all. However, since, according to what was said above, the magisterium of the Church comprises two parts, one positive, namely, teaching doctrines, and the other negative, namely, preventing and hindering errors; the minister of the Church cannot proceed in the same manner in the exercise of this office. For it is inherent in the nature of offices that those which are positive, e.g., prayer to God, hearing Mass, etc., obligate from a distance; while those which are negative, such as the prohibition of blasphemy, abstinence from servile works on holy days, etc., always and forever, as the pragmatists say, apply. Therefore, the ministry of the word, with regard to the positive part of teaching, can be carried out by Bishops not always and everywhere, but according to the manner and prudence; while, on the contrary, with

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regard to the negative part, of preventing and hindering false doctrine, it proceeds always and everywhere. What has been said so far in general has a close and special application in schools, where the inexperienced youth, not only receives profane instruction, but must also be educated in Christian disciplines. Thus, Leo XIII wrote to the Eminent Cardinal Vicar of Rome, on June 26, 1878 (1). Therefore, it is certain that the catechism and the apology of the Catholic faith must be transmitted according to the various classes of students and cultures, which, although it falls outside the scope of our discussion, it is appropriate to omit. Rather, emphasis should be placed on what directly concerns the present situation, namely, that it is the most serious right and duty of the Bishops to watch over, in all schools, that the Catholic sense is not perverted in the transmission of doctrines, that the minds of the students are not imbued with errors, and that the honesty of morals is not compromised: this duty, if it is to be exercised with regard to all disciplines (1). *Recole Vol. XI, 97.*

[*Latin ed. p. 686*]

686 CONIMBRICA. For heresy can also insinuate itself in the transmission of natural sciences, but it possesses a particularly and special application with regard to those who discuss the catechism, theology, and, in a word, matters of faith. For teachers, insofar as they are ordained to transmit religion, are dependent on ecclesiastical authority, both because, if they wish to be Catholics, they can teach nothing else, nor in any other sense than that which the Church transmits; and also because the instructor must necessarily be subject to that authority to which the care of the matter for which he is instituted belongs. And this is a certain doctrine widely received by the Church and handed down by the Doctors. Hence, the most Reverend Gavagnis, in his *Institutiones Iuris Publici Ecclesiastici*, volume 3, number 53, states: "It is undoubtedly the right of the Church to exercise vigilance over these (public) teachers, and to remove them at her judgment, if they pervert the Christian doctrine." And although "in practice, the right of vigilance, and the right of approval, produce the same effect, morally speaking," nevertheless "if, in a particular case, the Church judges it necessary to prescribe and give positive approval, she has that right." And elsewhere, namely, number 17 ibid., he argues that the Church has the right to "1. prohibit the faithful from attending any schools in which there is a danger of perversion regarding the faith, and... by the same right, also regarding morals; 2. to oversee that nothing contrary to the Christian doctrine is taught in any school; and 3. to demand that those who have attempted anything contrary to it be removed and punished in a Catholic society." This is also the opinion of the Holy Office; for in Cattolica, on December 4, 1734, it was decided "that the Bishop can prohibit schoolmasters from exercising their teaching, even if they have been appointed by lay communities, and even if the choice of these and the administration of their

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affairs belong to them, independently, unless they have first been approved by the Bishop." Indeed, the authority of the Syllabus is also consistent in this matter. For there, among the condemned propositions, the following are also listed, which are particularly relevant to our matter, namely, under number 45: "The entire..."

[*Latin ed. p. 687*]

CONIMBRICEN. 687: "The administration of public schools, in which the youth of a Christian republic is educated, with the exception of episcopal seminaries, can and ought to be attributed to civil authority, and indeed, it should be so attributed, so that no other authority is recognized as having the right to interfere with the discipline of the schools, with the management of studies, with the granting of degrees, or with the selection or approval of teachers." And under number 47: "The best arrangement for civil society requires that public schools, which are open to all classes of children from the people, and which are intended for the instruction in letters and more serious disciplines, and for the care of youth, be exempt from all ecclesiastical authority, in order to be fully subject to the will and power of civil and political authority, according to the wishes of those in power and the common opinions of the age." And finally, under number 48: "It can be demonstrated to Catholics that a method of educating youth which is separated from the Catholic faith and from the power of the Church, and which concerns only natural science, and only the ends of earthly social life, at least in part, is permissible." With these premises established, the digression into the doubts debated in this matter is easy and obvious. For in the Tridentine decree, chapter 2, session 25, four things are commanded to those to whom the care, visitation, and correction of universities pertain, namely: 1. that the canons and decrees of the Council be accepted; 2. that, according to their norm, those things which are of the Catholic faith be taught; 3. that the teachers swear an oath each year to this effect; 4. that if anything is worthy of correction, it be amended for the increase of religion and ecclesiastical discipline. Indeed, what is contained in numbers 3 and 4 contains something disciplinary, and therefore it can also be temporary and, at least in part, entrusted to secular hands. Unless, that is, it should be understood that because attention must be paid to correction for the increase of religion and ecclesiastical discipline, something that pertains entirely to ecclesiastical jurisdiction is indicated; unless, perhaps, this should rather be explained from a historical point of view."

[*Latin ed. p. 688*]

688. In Coimbra, in the state in which the Universities were then situated, it came to pass that matters pertaining to the Church were considered. However, whatever may be said regarding those things prescribed in numbers 3 and 4, which concern Minori, and other matters contained in the two

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preceding chapters, they clearly and absolutely demonstrate ecclesiastical jurisdiction. Indeed, the vigilance and care to ensure that the canons and decrees of the œcumenical councils are received in the Universities, and that matters pertaining to the Catholic faith are taught in accordance with them, constitute the most important part of that Church's teaching authority, about which we have spoken at length. This is, of course, a negative function, namely, to prevent the Christian doctrine from being attacked, and this function, as stated above, is so proper to the Church that it cannot be alienated from it, nor legitimately hindered. Furthermore, that supreme office of preserving the integrity of the faith, or doctrinal superintendence, about which we have inquired distinctly in the doubts, seems to be one and the same, and to coincide entirely with the care and vigilance of which the Council of Trent frequently speaks in chapter 2, session 25. Therefore, it seems that we must conclude, as we contended at the beginning, namely, that, by reason of the subject matter, which is entirely ecclesiastical and inalienable, the care and vigilance, prescribed by the Council of Trent in the object of this chapter, pertain only to legitimate and proper prelates of the Church. But he who seeks to exempt himself from his own Ordinary in this regard must fully and clearly demonstrate his privilege; and nevertheless, even in the state of privilege, he does not escape ecclesiastical jurisdiction; but rather, by this very fact, he necessarily falls under the immediate care and vigilance of the Roman Pontiff. Moreover, civil authority can never exercise such vigilance and care in the Universities and schools, either directly and exclusively, but neither cumulatively and with equal jurisdiction with the Church; but only subordinately and subsidiarily. And if the Bishop should exceed his authority, it is difficult to say whether it would not be permissible for both professors and civil authorities to appeal to the Holy See.

[*Latin ed. p. 689*]

GONIMBRICEN. 689 Concerning the object mentioned in chapter 8, session 22 of the Council of Trent, where schools which are under the immediate protection of the Kings are exempted from the visitation of Bishops, a manifold response can be given. Indeed, 1. The visitation which the Council of Trent commands Bishops to make in that chapter pertains primarily to discipline, the execution of decrees, and similar matters, the care and execution of which do not contradict the involvement of laypersons, and which we have often seen commended in the sacred canons to laypersons. But it does not seem proper to say the same concerning the care and vigilance in matters of faith, about which Bishops are vigilant and supreme guardians, and to which they are subject in these matters when they preach outside the cloister. Therefore, the exemption of schools from the visitation of Bishops does not seem to imply an exemption from vigilance and care that errors may not be taught therein. This is also confirmed by the argu-

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ment of analogy. For although hospitals and chapels which are under the immediate protection of the Kings are said to be exempt there, nevertheless Barbosa observes in his *Collectanea*, cited, no. 30: "that in these hospitals or confraternities under the protection of the Kings, prelates can visit the decency of divine worship and ornaments... which pertains necessarily and properly to the Bishops, because it is a spiritual and ecclesiastical matter." But 2. It could also be questioned whether, in the object of the chapter, the term "schools" properly refers to schools of students and teachers, or rather to schools of confraternities, or lay confraternities, which at that time were also commonly called schools. But 3. Even granting that, in the object of the chapter, the term "schools" refers to schools of students and teachers, nevertheless, the exemption is not given universally and indiscriminately to all schools that exist under the jurisdiction of a state or prince. Indeed, if this were the case, almost no public school would be found in which the Bishop could exercise his right. The Council of Trent does not say that any royal schools are exempt, but only those that are under the immediate protection of the Kings. Furthermore, Ferraris observes, *Comm. de Concil.*, vol. XXI, col. 44.

[*Latin ed. p. 690*]

690 COIMBRA. Visitation, number 66. "In order that hospitals, and schools for the same reason, be exempt from the visitation of the Bishop, they must have been so from their very foundation; and it is not sufficient if the hospitals are received later under the immediate protection of the King." And Barbosa, in the cited collection, number 30, adds: "This decree never derogated from the jurisdiction of the Ordinary... and therefore, the jurisdiction which the Bishops previously held before the Council in these places, they can exercise even after the Council," thus attesting that this was decided in Naples on August 12, 1618. However, it is not certain that the University of Coimbra is under the King's immediate or special protection; moreover, although it was founded by the King from the beginning, as an ecclesiastical matter, it passed under the jurisdiction of the Church, from which it appears to have been fully removed only by the recent actions of the minister De Pombal. Therefore, having considered these things, the following propositions have been proposed for clarification:

I. Whether, in these universities, which are not under the immediate protection and reform of the Roman Pontiff, but whose care, visitation, and reform pertain to the civil authority, does the civil authority also have all those duties which the Holy Council enumerates with the following words: - that they diligently see to it that these universities acquire and establish [certain things]?

II. And, assuming the affirmative, whether in these duties which pertain to the civil authority, is included also the highest office of safeguarding the integrity of the faith, which office is commonly called - doctrinal superin-

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tendence?

III. Whether doctrinal superintendence, even though it pertains to the civil authority, is direct, in that no other intermediate power is exercised, and exclusive, in that it can only be exercised by the civil authority?

IV. Whether, even though the care [of the university] pertains to the civil authority, the visitation...

[*Latin ed. p. 691*]

GONIMB RIGEN . 691: Concerning the care and reform of universities and general studies, does the ultimate office of safeguarding the integrity of the Faith, or doctrinal supervision, pertain to the ordinary Bishop, even with respect to a university that exists within his Diocese? QUESTION: Can the ordinary Bishop, by himself and immediately, admonish any professor of those universities, the care, visitation, and reform of which pertain to the civil authority, concerning an error that the professor may have taught in the university, or that he may have disseminated through writings within the Diocese? RESOLUTION: After deliberation by the Sacred Congregation on July 18, 1888, it judged it fitting to respond: To the first question: From the Council of Trent, Session 23, chapter 2, concerning the reform, care, visitation, and reform of universities, which are not immediately subject to the protection and reform of the Roman Pontiff, by proper and natural right, it pertains to the ordinary diocesan Bishops, and furthermore, it pertains to the same Bishops to amend and establish, for the increase of religion and ecclesiastical discipline, whatever in the aforementioned universities may deserve correction and reform. The contrary doctrine has been condemned in the Syllabus of the Most Holy Pope Pius IX, propositions 1, 11, IV, and V. FROM WHICH IT IS UNDERSTOOD: 1. That the care, visitation, and reform of universities, which are not immediately subject to the protection and reform of the Roman Pontiff, pertain by proper and natural right to the diocesan Bishops. 2. That the same Bishops also pertain to the amendment and constitution of those things which may deserve correction and reform for the increase of religion and ecclesiastical discipline. 3. That the prescription or office of visiting and correcting, with regard to universities, is directed by the Council of Trent, chapter 2, session 25, only to the Bishops, as the reason of the context, and many other things, indicate. 4. If the Council of Trent had wished to speak of Kings and Princes, it would have named them, as it has done in other cases, both for decency and reverence, and for a greater effect of the law.

[*Latin ed. p. 692*]

692 CONIMBRICA. V. That the authority of visiting and correcting, with regard to general studies, which has been entrusted to Bishops, is most consonant with the constitution of the Christian society itself, is also gathered from the fact that the Church has the right to govern theological and

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canonical disciplines, the institution of which has held a prominent place in Universities. VI. Therefore, while princes may exercise only a certain external authority for the protection of religion; it is proper for the pastors of the Church to be vigilant so that errors do not creep in, to propose what ought to be believed and practiced, and to prohibit falsehoods. VII. For the teaching authority of the Church comprises a twofold aspect: one positive, for teaching the truths, and another negative, for preventing or averting errors. VIII. Since the inexperienced youth in schools must not only be instructed with profane learning, but also be imbued with Christian disciplines, it is the natural duty and right of Bishops to oversee the teachers and to remove them if they pervert Christian doctrine. IX. Civil authority, in maintaining the integrity of Christian doctrine in Universities, can exercise a subordinate and subsidiary vigilance, but by no means a direct and exclusive one, nor one with cumulative power, nor one with equal jurisdiction with the Church. FROM THE SACRED CONGREGATION, DECREE of Rome, concerning the beatification and canonization of the venerable Servant of God, Magdalene Sophie Barat, foundress of the Society of Sisters of the Sacred Heart of Jesus. Whereas, by Decree of the Sacred Congregation of Rites on August 13, 1885, permission had already been granted to proceed in the ordinary manner concerning the fame of the sanctity of life, virtues, and miracles of the aforementioned venerable Servant of God, Magdalene Sophie Barat, in the same Sacred Congregation.

[*Latin ed. p. 693*]

From the Sacred Congregation of Rites, number 693, the deliberations were held without the intervention or vote of the Consultors. His Eminence and Reverend Lord Cardinal Raphael Monaco of Valletta, presiding over this cause, at the request of the Reverend Lord Francis Xavier Bacchi, Postulator for the same cause, in the ordinary assembly of the Sacred Congregation of Rites, held on the day indicated at the Vatican, proposed the following question for discussion: Whether the validity and relevance of the process, established by apostolic authority in Paris, concerning the fame of the sanctity of life, virtues, and miracles, in the case of the aforementioned venerable servant of God, are established, and whether this applies to the matter under consideration? Furthermore, the Eminent and Reverend Fathers, Prefects of the Sacred Rites, having carefully considered all matters, and having heard the voice and written opinion of the Reverend Father Augustine Caprara, Promoter of the Holy Faith, decided to respond: Affirmative. On April 6, 1889. These matters were faithfully reported to His Holiness, Pope Leo XIII, through the undersigned Secretary, and His Holiness approved and confirmed the decree of the Sacred Congregation on May 9th of the same year.

CHARLES CARD. LAURENTIUS.

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Royal Clericus, Prefect.

VINCENT NUSSI,

Sacred Roman College, Secretary.

Decree of Annecy. Concerning the confirmation of the cult rendered to the servant of God, Germanus, an abbot of the Order of Saint Benedict, now venerated as a saint, from time immemorial. At the request of the Reverend Lord Julius Captier, general procurator of the aforementioned Seminary, Postulator for this cause, when His Eminence and Reverend Lord Cardinal Lucidus Maria Parocchi, presiding over this cause, in the ordinary assembly of the Sacred Congregation of Rites, held on the day indicated at the Vatican, proposed the following question: Whether the judgment of the Bishop of Annecy concerning the cult rendered from time immemorial to the aforementioned servant of God, Germanus, or concerning the case excepted from the decrees of the blessed Urban VIII, Pope, should be confirmed in this case, and whether this applies to the matter under consideration? Furthermore, the Eminent and Reverend Fathers, Prefects of the Sacred Rites, having carefully considered all matters, and having heard the voice and written opinion of the Reverend Father Augustine Caprara, Promoter of the Holy Faith, decided to respond: Affirmative. On April 6, 1889.

[*Latin ed. p. 694*]

694 FROM THE SACRED CONGREGATION: The Sacred Congregation, having received a faithful report concerning the aforementioned matters from the undersigned Secretary, has deigned to ratify and confirm the decree of His Holiness, Pope Leo XIII. May 9th of the same year. C. CARD. LAURENTIUS. Prefect. R. C. NUSSI S. C. L. & S. VINO. Secretary. DECREE whereby the Feast of the Most Sacred Heart of Jesus is elevated to the rite of Double of the First Class. In this, the latter part of the century, since the most important benefits of our Redeemer, under the symbol of His Most Sacred Heart, have begun to be recollected by the faithful with a special devotion, which increases marvelously from day to day; and having received repeated prayers from many sacred prelates, clergy, and people, urging that the Feast of the Most Sacred Heart of Jesus, which was prescribed by the late Pope Pius IX under the rite of Double of the First Class for the entire Church (Decree of the Sacred Congregation, August 23, 1856, from which), might henceforth be elevated to the rite of Double of the First Class, without the obligation of the festive precept. Moreover, the Most Blessed Father, to whom nothing is more pleasing than that the faithful may grow in grace and in the knowledge of our Lord Jesus Christ, and that they may know the surpassing charity of His science, gladly accepted these supplications: especially intending to see that, as the efforts of impiety increase,

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the faithful may find refuge and protection in this salutary devotion, and that, inflamed with a more ardent love for the most beloved Redeemer, they may offer Him worthy praise and adoration, and at the same time, implore divine mercy more fervently for the increase of the Faith and for the peace and safety of the Christian people. Moved by these considerations, the Most Blessed Father, after deliberation with the Congregation of Sacred Rites, decided to grant a special grace and privilege: With no change affecting those who enjoy privileges granted by the Apostolic See, the Feast of the Most Sacred Heart of Jesus is elevated to the rite of Double of the First Class, without an Octave, throughout the entire Church.

[*Latin ed. p. 695*]

According to the Sacred Rites, number 695, the Church is to be celebrated; without the obligation of hearing the Sacred Office, and without abstaining from servile works. This feast is observed on the feria VI (Friday) after the Octave of Corpus Christi, as if in its proper time; and it yields to no other feasts of the Double class of the first rank, which are universal to the Church, namely the Nativity of Saint John the Baptist, and of the Holy Apostles Peter and Paul, nor also to feasts particular to that rite, such as the Feast of Dedication, and the titular feast of the Church, and the feast of the Patron, when these occur under a double obligation; in which cases, the feast in question is observed on the immediately following day, as if in its proper time. In the case of a conflict between the Feast of the Most Sacred Heart of Jesus and the feria VI of the Octave of Corpus Christi, the complete Vespers are to be said of the same Octave, without any commemoration, considering the particular nature of each feast. Regarding a conflict with the feasts of the Double class of the first rank, both Vespers are to be ordered according to the instructions and decrees of the Sacred Congregation of Rites. Furthermore, in order to foster the piety of the faithful towards the Most Sacred Heart of Jesus, Our Most Holy Lord has graciously and freely granted that, in all churches and chapels, on the feast day, whether it be the proper feast or a transferred one, of the Most Sacred Heart of Jesus, the Divine Office be recited before the Most Holy Eucharist; and that the clergy and the people who participate in these Offices shall receive the same Indulgences which the Supreme Pontiffs have granted to the faithful who assist at the Divine Offices during the Octave of Corpus Christi. In those churches and chapels, where on the feria V (Wednesday), which occurs first in each month, special exercises of piety in honor of the Divine Heart are performed, with the approval of the local Ordinary, it is permitted, with the blessing of the Most Blessed Father, to add a votive Mass of the Sacred Heart of Jesus; provided that no feast of the Lord, or a feast of the Double class of the first rank, or a feria, Vesper, Octave from the privileged list, falls on that day; otherwise, the usual regulations are to be observed. Finally, His Holiness desired that Apostolic Letters be issued on this decree, in the

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form of a Brief. On June 28th, the feast of the Most Sacred Heart of Jesus, in the year 1889.

CAROLUS Card. LAURENZI, Prefect of the Sacred Congregation of Rites.

S. Vincentius Nussi, Secretary of the Sacred Congregation of Rites.

[*Latin ed. p. 696*]

696 FROM THE HOLY CONGREGATION OF THE ROMAN INQUISITION: A QUESTION regarding the faculty of granting dispensations concerning public matrimonial impediments in cases of mortal danger. From Rome, to the Most Reverend Fathers, the following question was proposed to this Congregation of the Holy Office: "Whether Ordinary pastors, in cases of extreme necessity, can habitually delegate to parish priests and to all approved confessors, the faculty of granting dispensations concerning public matrimonial impediments in cases of mortal danger, which was granted to them by the Most Reverend Congregation, on the 20th of February, 1888 (1), or not." After mature consideration of this question, the Most Reverend Fathers, together with myself, the General Inquisitors, on the 9th of January, 1889, declared: "We request that the Most Holy Father deign to decide and declare whether Ordinary pastors, to whom the aforementioned faculty was granted on the aforementioned day, the 20th of February, 1888, can habitually delegate it to parish priests only, but in cases in which there is no time to appeal to the Ordinary pastors themselves, and there is danger in delay." On the same day, the Most Holy Lord, Pope Leo XIII, by the divine providence of God, graciously approved, in accordance with the vote of the Most Reverend Fathers, during the usual audience granted to the Reverend Father, the Assistant of the Holy Office. I inform you of this, and I pray that all may go well and happily, from the Lord. Given at Rome, from the Holy Office, on the 1st of March, 1889. R. CARD. MONACO.

LETTERS in which it is ordered that Bishops transmit to their successors portions of the Holy Wood of the Cross, which they carry suspended before them in enclosed containers. To the Most Reverend and Most Reverend Lords, Since the relics of the most holy Cross are becoming increasingly rare, and it is to be feared that, little by little, there will not be enough to properly hand over to the Bishops themselves, as a fitting symbol of their dignity; at the command of the Most Holy Lord, Pope Leo XIII, We earnestly commend to the Reverend Bishops that they transmit to their successors the portions of the holy wood which they carry in enclosed containers (1).

[*Latin ed. p. 697*]

From the Sacred Congregation, number 697, it is decreed that those relics which are held suspended before the breast are to be carefully transmitted to their successors, so that after the death of the former, they may reach

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those who follow through the legitimate right of inheritance (through the care and work of the Cathedral Chapter, or of he who, when the See is vacant, performs the duties of the Bishop). In this way, new Bishops will not need to seek elsewhere, with difficulty, other things, but will have all these things readily available, as if they were intended for themselves and for their office, to be transmitted to those who will follow in their time. This applies only to the relics of the Cross. Concerning the boxes made of precious metal, fashioned in the form of the Cross, it is determined that what seems most fitting shall be done: that is, when the particles of the holy wood have been removed, they may be given, bequeathed, or distributed to those who desire them, or sold, free from any appearance of indecorum or profanity, through private inheritance. For they are of considerable value. I have no doubt, Most Illustrious Lord, that you will attend to this most equitable desire of the most provident Pontiff with the care and diligence that are appropriate. In the meantime, I earnestly pray for all good things for you from God and from the Virgin Mother, and I commend myself especially to your prayers. From Rome, from the Offices of the Vicariate, on the Solemnity of the Annunciation of the Blessed Virgin, on the 25th of March, 1889. Your Most Loving Brother, CARDINAL VICARIUS.

From the Sacred Congregation for Indulgences, a Decree whereby an Indulgence of one hundred days is granted, for the prayer offered to implore the grace of maintaining chastity by clerics in the sacred Orders.

The Most Blessed Father Gaussens, a priest of the Diocese of Burdigala, humbly prostrates himself before Your Holiness and implores that Your Holiness would deign to grant an Indulgence to all those devoted to the military service of the Church, and who are already established in the sacred Orders, to those who, at least with a contrite and devout heart, recite the following prayer.

[*Latin ed. p. 698*]

698 FROM THE SACRED CONGREGATION REGARDING INDULGENCES: Prayer. Lord Jesus Christ, spouse of my soul; delight of my heart, indeed, my heart and my soul, before Your presence, I prostrate myself in humility, and with the greatest fervor, I pray and beseech You, that You may grant me to preserve the faith which I solemnly gave to You upon receiving the order of Subdeacon. Therefore, O sweetest Jesus, I renounce all wickedness, and I shall always be *alienus* from carnal desires and worldly lusts, which are contrary to the soul, and, with Your help, I shall inviolably observe chastity. O Most Holy and Immaculate Mary, virgin of virgins and our most loving Mother, cleanse my heart and soul daily, and obtain for me the fear of the Lord and a singular trust in You. Saint Joseph, guardian of the virginity of Mary, guard my soul from all sin. All you holy virgins, who follow the divine Lamb wherever He goes, be always concerned for my sins, so that I may not sin in thought, word, or deed,

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and that I may never depart from the most chaste Heart of Jesus. Amen. His Holiness Pope Leo XIII, in an audience held on March 16, 1889, by the undersigned Secretary of the Sacred Congregation for Indulgences and Sacred Relics, benignly granted to all those who, with at least a contrite and devout heart, recite the aforementioned prayer, a plenary indulgence of one hundred days, applicable also to the souls of the departed, once a day. This grant is valid forever, without any need for an Indulgence Brief. Notwithstanding any contrary provisions. Given in *Rome* from the Secretariat of the aforementioned Sacred Congregation on March 16, 1889. C. CARD. CRISTOFORO, Prefect. ALEXANDER, Bishop of *Oensis*, Secretary. FROM THE THIRD CONGREGATION, on the Feast of St. Barnabas, June 14, 1889. The Sacred Congregation of the Most Eminent Cardinals of the Holy Roman Church, by the grace of God, under our Pope Leo XIII, concerning the Index of books of pernicious doctrine, and the Most Reverend and Holy See of *Apoeorum*, and others, condemns and prohibits...

[*Latin ed. p. 699*]

FROM SACRED CONGREGATION INDEX 699 (regarding expurgation, and permission throughout the Christian Republic, of superiors and delegates, given in the Apostolic Palace at the Vatican on April 13, 1889, condemned and condemns, proscribes and proscribes, or orders that the following work be referred to the Index of Prohibited Books, and so it is ordered: Synopsis of Canon Law, as it was in former times and as it is now, by Hieronymus Fiore, Canon of the Greater and Mother Church, under the title of the Most Holy Apostles Peter and Paul, in the town of Cusani Mutri, in the Diocese of Telesia. Naples, from the Perrottian Printing Press, 1886. — Decree of the Sacred Congregation of the Holy Office, April 4, 1889. Il Rosmini — Encyclopedia of Sciences and Letters, prepared by a Board of Directors composed of writers accredited in the various branches of knowledge. Milan. — Decree of the Sacred Congregation of the Holy Office, May 29. Therefore, no one, of whatever rank and condition, may dare to publish or, having published, read or retain the aforementioned works, in any place, and in any language, but rather they are obliged to deliver them to the Ordinary of the place or to the Inquisitors for heretical depravity, under the penalties indicated in the Index of Prohibited Books. These matters, having been related to the MOST HOLY LORD OUR POPE LEO XIII by me, the undersigned, Sacred Congregation of the Index, HIS HOLINESS approved the Decree, and ordered it to be promulgated. In witness whereof, etc. Given in Rome on June 14, 1889. CAMILLUS MARIA Cardinal MAZZELLA, Prefect. HYACINTHUS FRATI, of the Order of Preachers, Sacred Congregation of the Index. In the place of the Seal. On June 17, 1889, I, the undersigned, Magister Curiae, testify that the aforementioned Decree was affixed and published in the City. Vincentius Benaglia, Magis-

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ter Curiae.

[*Latin ed. p. 700*]

700 APPENDIX VI. In which are recounted more Decrees of the Holy Congregation of Rites. AVIGNON. According to the *Caeremoniale Episcoporum*, the solemn chant of prayers ought to be used only in the Mass, in Lauds, and in Vespers. However, in many places, it is customary to use the solemn chant in the prayers which are sung in processions, and in the Benediction of the Most Holy Sacrament. Therefore, the Most Reverend and Illustrious Lord, Francis Edward Korby, Archbishop of Avignon, requested that the Holy Congregation of Rites declare: Whether the chant of prayers in processions, and in the Benediction of the Most Holy Sacrament, ought to be solemn, or not? And the Holy Congregation itself, having considered the report of the undersigned Secretary, judged that the following should be answered: Let the *Caeremoniale Episcoporum*, Book I, chapter 27, number 1, and following, be observed, and let a less solemn chant be used in functions outside of Mass, Lauds, and Vespers. And thus it answered, and declared. On March 23, 1881. TURIN. The Most Illustrious and Reverend Lord, as a brother, presented to the Holy Congregation of Rites a certain Missionary Priest, Apostolic, in the regions of Stibalpin, who, for the great benefit of preaching, has often been accustomed to use this method to stir up the minds to devotion towards the Most Holy Sacrament; namely, the Priest, having arranged the hour for a discourse on the Most Holy Eucharist, which he is to celebrate after the Mass has been read, interrupts the Mass four, eight, or even more times, either before, or after, or even during the course of the Canon, in order to explain to the people the divine mysteries of love which are being performed in the meantime, thereby prolonging the Mass beyond its due time. Since this method of acting seems to be contrary to the liturgical prescriptions, he was questioned by this Holy Congregation as to whether it has ever been permissible to admit this method. And the Holy Congregation itself, having considered the report of the undersigned Secretary, answered this question: No, and with good reason. The reason is this: if discourses on the Most Holy Eucharist are to be given, let them be given before Mass, and only once, before the Communion of the faithful, if this is appropriate. Rome, March 23, 1881. To the Most Illustrious and Reverend Lord, as a brother, the Archbishop of Turin.

[*Latin ed. p. 701*]

NEAPLES. By Decree of the Congregation of Sacred Rites, dated March 11, 1871, in a church of St. Domninus in Burgos, it was permitted to continue the custom prevailing there of reciting in the vernacular language before the Most Holy Sacrament, or after the prayer "Deus qui nobis," before the Benediction, or after it, the prayers: "Dio sia benedetto," "Benedetto il suo Santo Nome," etc. However, in a certain monastery of the

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Order of St. Benedict in the Archdiocese of Naples, the custom prevailed of singing, after the prayer and before the Benediction of the Most Holy Sacrament, one of the antiphons of the Divine Office for the feria, namely "Ave Regina caelorum, Regina coeli, Salve regina, Alma Redemptoris," whereupon the Most Reverend William Sanfelice, Archbishop, humbly inquired of the Sacred Congregation: I. Whether such a custom may be continued? II. Whether it may be permissible in other churches also to recite certain prayers in the vernacular language before and after the Benediction of the Sacrament? Furthermore, the same Sacred Congregation, having heard the opinion of another of the Masters of the Sacred Liturgy, deemed it advisable to respond to the Secretary in the following manner: To I. The aforementioned antiphons should be sung immediately after the Litany, with the prayer of Blessed Mary Virgin accompanying it (cf. index, p. 701). If, however, the Litany is not sung, the same antiphons should be recited before the hymn "Tantum ergo." II. No, not immediately before the Benediction. And thus it responded. March 23, 1881. REGARDING GUYANA. The Most Reverend Joseph Emmanuel Armyo, Bishop of Guyana, humbly implored the Sacred Congregation of Rites to declare on the following matters: I. Whether the Office of the Most Holy Redeemer, and the Offices of the Heart, of Maternity, of Purity, and of the Patronage of the Blessed Virgin Mary, which are assigned for Sundays, should be transferred, or rather omitted? II. Whether the Offices of Prayer in the Mount of Olives, of the Passion, of the Crown of Thorns, of the Lance, and the Nails, of the Scourge, of the Five Wounds, and of the Precious Blood of Our Lord Jesus Christ, should be transferred or omitted when impediments occur? III. Whether the day of March 26 can be assigned as a fixed day for the perpetually transferred feast? IV. Whether the rite of blessing the dowry and the two rings, as prescribed in the appendix to the Roman Ritual in the Toledo Manual, should be observed in the solemn blessing of marriages? V. Whether the same rite should be observed even if it is not followed by a Mass for the Spouses?

[*Latin ed. p. 702*]

702 APPEf VI. Whether the custom of the bride and groom covering the bride's shoulders and head during the blessing at the Nuptials should be maintained. VII. Whether the bridegroom and bride are necessarily required to receive the Holy Communion at the wedding Mass? The Sacred Congregation of Rites, after carefully considering the following questions, presented by the undersigned Secretary, and previously examined by one of the Masters of the Sacred Ceremonies and by the Reverend Assessor of the same Congregation, has decided as follows: To I. Offices assigned on certain Sundays or weekdays, and granted to a particular church, cannot be transferred without a special privilege. To II. Provision is made in the preceding. To III. Affirmative. To IV. Nothing is to be changed. To V. Affir-

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mative. To VI. Provision is made in the fifth. To VII. A decree shall be issued in Lavantin on the 21st of March, 1874. (1) And thus it has responded and declared. On September 15, 1881. BERGOMEN. The following questions were presented to the Sacred Congregation of Rites by the Most Reverend Camillo Guindani, Bishop of Bergom, to be resolved: Question I. Some portable altars, which are sacred tables, are constructed in such a way that a reliquary is placed within them, covered with a small stone and sealed with lime, but with a thin plate made of ordinary brass or tin, also sealed with lime, or with iron supports fixed at the four corners, or with another iron plate, narrower but longer, placed transversely over it, and fixed at both ends into the stone. This reliquary is sometimes found on the upper part of the sacred table, and sometimes on the lower part. It is certain that these tables were consecrated in former times. The question is whether these sacred tables can be tolerated. Question II. The eve of the Dedication of a church is celebrated with Vigils before the relics are placed in the altar, reciting the Nocturns with the Lauds of the Common of the Saints and Martyrs. However, it is doubtful whether the Bishop who celebrates the Dedication, the parish priest, and all the assisting priests, after reciting this office, are obliged to recite the office of the following day, or whether they are to be considered exempt from this obligation, according to the axiom "Office for Office," and in the negative. Question III. What is to be said about the practice that has prevailed in some places? The same Sacred Congregation, in response to the report of the undersigned Secretary,

[*Latin ed. p. 703*]

On the ninth day of the month, after having heard the opinion of another expert in the matters of the Apostolic Ceremonies, and having duly considered these doubts, the following was decided. To Question I: Negatively. To Question II: Affirmative for the first part, negative for the second part. To Question III: The practice should no longer be followed. And thus it was decided and declared. On the 16th of September, 1881. IMOLA. The Most Reverend Aloysius Tesorieri, Bishop of Imola, humbly proposed the following questions to the Sacred Congregation of Rites, namely:

I. Are priests, having the faculty delegated by the Bishop to bless sacred vestments, always obliged to use the formula found in the Missal and Ritual, under the title of "sacred vestments in general," even when a simple stole is to be blessed; or can they also use the formula for the blessing of individual sacred vestments, which is found in the Pontifical?

II. Can a Bishop, having the faculty to delegate priests for the blessing of sacred furnishings, also delegate them for the blessing of sacred vessels?

III. Many blessings are found, most of which are recorded in the Ritual recently published in Rome, which (1) [Reference: This volume, page 635, 703] are proper to various religious orders. Hence, the question arises: Can a Bishop, and the priests delegated by him, administer these blessings, es-

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pecially if there are no members of that religious order in his own diocese?

Furthermore, the Sacred Congregation of Rites, after hearing the opinion of another expert in the matters of the Apostolic Ceremonies, and having duly considered the report of the undersigned Secretary, decided as follows:

To Question I: Affirmative for the first part; negative for the second part; and a decree should be issued on this matter. On the 4th of September, 1880, regarding Question III (1).

To Question II: Affirmative.

To Question III: Negative, without an apostolic indult. And thus it was decided and declared. On the 2nd of December, 1881.

OF THE CISTERCIAN CONGREGATION OF THE TRAPPISTS.

The Most Reverend Benedict, Abbot of the Monastery of Westmalle, General Vicar of the Trappists in Belgium, humbly requested the Sacred Congregation of Rites to provide a solution to the following question, namely: If the Feast of Saint Ambrose, April 4th, is to be transferred when it falls between Palm Sunday and the Sunday in White, it often happens that this feast, when transferred, coincides with the Feast of Saint Isidore, April 21st; but the feasts of Saint Isidore and Saint Anselm have the same prayer.

[*Latin ed. p. 704*]

704 On the occasion of the Feast of St. Ambrose, which falls within the Common of Doctors, and in the case where the Feast of St. Isidore, or St. Anselm, or St. Leo coincides with it, recourse must be had to the prayer of the Common Confessor. Hence arises the question: which prayer should be used? Therefore, it is asked whether the following note can be added in the Breviary of the Cistercian Order on April 4th, on the Feast of St. Ambrose, namely: "If the Feast of St. Ambrose is transferred and coincides with the Feast of St. Isidore, or St. Leo, or St. Anselm, for the commemoration of the Feast of the Three Readings, it is said at Vespers: 'Antiphon: Euge, f. Ecce Sacerdos,' and at Lauds: 'Antiphon: O Doctor.' If, moreover, the same prayer is suitable for the Feast being commemorated, then the prayer 'Exaudi quaesumus' should be used for it." However, the Sacred Congregation of Rites, in response to the report of the undersigned Secretary, judged that no special rubric should be added to the Office of St. Ambrose, but that the general rubric under the title "De Commemorationibus" (Concerning Commemorations), number 5, should be observed, the meaning of which, with regard to the prayer, is that the prayer should be said for the commemoration which is assigned among those not recited, and which is placed first in the Common, unless otherwise indicated in a special rubric. And thus it

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responded, and it wrote. December 19, 1881.

[*Latin ed. p. 705*]

705 ADDRESS of the Most Holy Pope Leo XIII, delivered in the Consistory on June 30, 1889, in which he laments the condition in which the Roman Pontiff finds himself with regard to his liberty and dignity. Venerable Brothers. As We recently addressed you in this very place, We stated that new and even more grievous injuries were being inflicted upon the Church and the Roman Pontificate in this venerable City; and, with the greatest sorrow of Our heart and to the offense of all good men, this has now been proven. — Concerning this matter, We have ordered you to be convened outside of the ordinary schedule, so that We may bring to light the recent and unseemly act which has affected Us, and also, as is fitting, that you may freely and openly express your abhorrence of this outrage in Our presence. After the changes in Italy, and the capture of the city of Rome, We have indeed seen the most holy religion and the Apostolic See subjected to a long series of injuries. — But the wicked sect strives more and more fiercely to make things worse, and having not yet yielded, they are determined to impose upon the city, which bears the name of Catholic, a principality of every profane custom and impiety: and to this end, they gather the flames of envy from all sides, so that, having seized upon the Church as a fortress, they may more opportunely attempt to undermine the very cornerstone upon which it rests, if it were possible. Indeed, as if they had not yet caused enough ruin in so many years, they have dared to try to overcome Us with audacity, and on one of the most holy days of the Christian year, they erected a monument in public, by which a stubborn spirit against the Church is to be commended to posterity; and at the same time, it is taught that waging war against the Catholic name is pleasing. — This intention, as is evident, is clearly demonstrated by their actions. They bestow honors upon a man who is a double traitor, a heretic condemned by judgment, against whom, until his very last breath, there has been a persistent hostility towards the Church. In fact, they deem it fitting to adorn him with these very things: for there is no true merit in him. Not singular knowledge of things: for his own writings clearly demonstrate his adherence to pantheism, and he is a follower of a base materialism, entangled in vulgar errors, from which he himself is not infrequently dissenting. Not the ornaments of virtues, since the documents of his behavior demonstrate to posterity the utmost wickedness and corruption, by which a man can be driven by insatiable desires. Not outstanding deeds, nor exceptional merits for the public good: but customary arts, such as feigning, lying, being devoted to one person, and not tolerating anyone who thinks differently, flattery, and a base and wicked disposition. Therefore, the Acts, Volume

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XXI, page GOLII.

[*Latin ed. p. 706*]

706 ADDRESS. Those who have had such a man, that power, that very voice, which is almost a decree, must strive to establish all life according to the Christian faith, and to completely reclaim the minds of men from the power of Jesus Christ. — This is plainly the evil design and work of wicked sects, which, by whatever means they can, seek to alienate entire nations from God; and which wage infinite hatred and the ultimate struggle against the Church and the Roman Pontificate. — But in order that this injustice might be even greater and the cause more notorious, it was decided to hold the dedication with great pomp and with a larger gathering of people. During those days, Rome saw a considerable multitude gathered within its walls from all sides; impious banners were openly displayed, insulting the religion; and what is most horrible, there were no lacking signs with idols of that most wicked one, who refused to be subject to the Most High in Heaven, the seditious leader, the instigator of all treachery. — To this wicked audacity, added to the speeches and writings, there was a shameless and unrestrained mockery of the most sacred things, and the so-called freedom of thought, which is the fertile mother of perverse opinions, was vehemently extolled, undermining the foundations of Christian morals, of discipline, and of civil society. This sad work, however, was carried out with long preparation, instruction, and perfection, not only by those who are in charge, but also by those who lavishly and openly offer their favor and encouragement. It is a bitter thing to say, and a portent of evil, that from this venerable city, in which God has placed the dwelling of His Vicar, a proclamation of rebellion against God by human reason should emanate; and from that place, from which the uncorrupted precepts of the Gospel and the counsels of salvation have always sought to reach the whole world, there, with things turned unjustly, are consecrated without punishment the nefarious errors and the very heresy itself. We have arrived at such times that we have witnessed an abomination and desolation in the holy place. In such an outrage of things, since the governance of the Christian republic has been entrusted to Us, along with the custody and protection of religion, We testify that the offense and insult to the City and the sanctity of the Christian faith have been shamefully violated; and We denounce this sacrilegious act to the entire Catholic world, lamenting and condemning it. But it is permissible to draw useful lessons from injustice. — From this, it becomes ever more apparent whether those who have overturned the civil authority have hostile intentions, or whether they seek something else as their ultimate goal, namely, to equate the sacred authority of the Pontiffs with the earth, and to uproot the Christian faith from its very foundations. — Similarly, it becomes clear whether We are defending the rights of the Apostolic See by some human means, or rather, by the freedom of the apos-

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tolic office, by the dignity of the Pontiff, and by the very things themselves.

[*Latin ed. p. 707*]

ADDRESS 707: Let us be moved by the prosperity of Italy. – Finally, from this very recent event, it is abundantly clear how much those things, which at the beginning had promised and vowed so much, are worth, and to what extent they have fallen. Indeed, all the honors and acts of reverence with which they declared they wished to honor the Roman Pontiff, have resulted in the gravest injuries and insults: and these, now, will remain in the greatest degree and before the eyes of all, as a monument of impure and lost men. – Furthermore, this City, which they affirmed would always be a glorious and safe seat for the Roman Pontiff, they wish to make the head of a new impiety, where worship is given to human reason, as if it were placed on a divine pedestal, in a manner that is absurd and impious. Therefore, consider, Venerable Brothers, what freedom or dignity remains for us in fulfilling our highest Apostolic office. – Nostia is not without fear and danger: for no one is ignorant of what the worst of men conspire and what they seek; nor is there anyone who does not see that, with the passing of time, they are increasing both in number and in audacity, and that they have resolved not to cease until they have driven things to the extreme and to ruin. And if, in the matter of which we complain, they were not given so much license, so that they might pursue their wicked designs even with violence and force, it is easy to imagine that, at the opportune moment, they will be ready to commit even this crime; especially since we are in the power of those who do not fear to publicly accuse us of being hostile to Italian affairs. No less to be feared is that the audacity and licentiousness of wicked men, inflamed to commit every deed, may not always be restrained and curbed, if, perchance, more fearful and turbulent times should arise, either because of civil disturbances and changes in public affairs, or because of the movements, calamities, and wars. – Thus, it becomes all the more apparent what condition holds the highest Head of the Church, the Pastor, and the Magistrate of the Catholic name. Indeed, we are almost broken by the bitterness of these sorrows and the weight of cares, and further weakened by age, unless the spirit is raised and the forces sustained by the most certain hope, that Christ will never abandon his Vicar, and by the consciousness of duty, by which we are sanctly urged, to cling more firmly to the helm of the Church, as the storm, stirred up from the infernal regions, rages more fiercely against it, full of errors and lusts. – Therefore, we have all our hope and trust placed in God, whose cause is at stake.

[*Latin ed. p. 708*]

708 ADDRESS, with the utmost confidence, moved by the most fervent supplication which we implore, O most holy Virgin, Helper of the Christian people, and also of the blessed Princes of the Apostles, Peter and Paul,

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whose patronage and protection this flourishing City has always happily enjoyed. Indeed, just as you, Venerable Brothers, constantly associate with us in prayers and supplications to God, the Preserver and Avenger of His Church, so we do not doubt that the Venerable Bishops throughout Italy will likewise do so steadfastly, and with even greater diligence and effort, attending to the needs of their respective people, as the circumstances demand.

In this, we especially urge them, that they openly and clearly declare to them the extent of the injustice and perfidy of the schemes undertaken by those enemies of religion and of the Fatherland. For the matter is of the highest and truest good, which is contained in the Catholic faith; and the enemies strive to tear away the Italian people from that faith, from which they have long flourished with all kinds of glory and prosperity; and it is utterly forbidden for Catholics to slumber or lightly regard such great dangers; but rather, they must be zealous in professing their faith, steadfast in defending it, and also eager and prepared to undertake any sacrifices, if the circumstances require it, for its sake.

These documents and warnings concern more closely the Roman citizens, since their faith, as is evident, is daily subjected to more and more cunning attacks. But they, knowing that they possess the benefit of faith from God, with such proximity and union with this Apostolic See, should all the more remember to persevere in it, worthy as they are of those ancestors and elders, whose faith has been celebrated throughout the world with a glorious reputation. And they, along with all Italians and all Catholics everywhere, should not cease to implore God, that if He will, with greater clemency, remit His wrath, provoked by so many outrages against the Church and by such insane controversies, and that He may grant, through our common prayers, mercy, peace, and salvation to those who earnestly desire them.

[*Latin ed. p. 709*]

709 Letters from the Most Holy Pope Leo XIII to the Archbishop of Milan, concerning the decree condemning forty propositions drawn from the posthumous works of Anthony Rosmini. Venerable Brother, greetings and Apostolic Benediction. By letters addressed to you, Venerable Brother, and to the Archbishops of Turin and Vercelli, as well as to the Bishops of these provinces, dated January 25th, 1882, We deemed it necessary to discuss with you certain beginnings of discord and the dangers that We perceived were looming, due to grave matters arising in these very provinces, especially concerning discussions among the authors of periodicals regarding the philosophical and theological doctrines of Anthony Rosmini. We stated that it was your concern and care to omit nothing that seemed more suitable for calming the ardor of minds, lest the pursuit of truth should turn out to be detrimental to charity and justice. We also added that it

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would be better if, especially, Catholic writers of periodicals were to abstain from treating such questions, and that this Apostolic See should be aroused to vigilance concerning more serious matters, particularly those pertaining to the sanctity and integrity of Catholic truth, using the mature deliberation to which any Catholic man is entitled to aspire. Indeed, Our intention was to satisfy the wishes of many learned men, even among the order of Bishops, who, with fervent prayers, had requested that We might examine and decide concerning the writings of Anthony Rosmini. For this reason, We entrusted this matter to the Council of Our Venerable Brothers Cardinals, Prefects of the Holy Roman and Universal Inquisition: and all know that this Prefecture of the Council is directed by the Supreme Pontiff Himself. They, having obeyed Our will and commands, with the prudence and mature judgment that the gravity of the matter required, after several meetings, took care to thoroughly examine and carefully consider all the opinions that were presented to them for examination. Concerning what was acted upon and deliberated in each meeting, We, as We had ordered, received a precise and faithful account thereof from the Assessor of that same Holy Council. Finally, on December 14th, 1887, the Decree, "Post Obitum," was issued, by which forty propositions, taken from the posthumous works of Anthony Rosmini, were condemned in large part.

[*Latin ed. p. 710*]

710 Letters, and a Decree attached to them, are condemned. This Decree, which certainly pertains to doctrine, as it is published together with the aforementioned regulations, has been fully approved and confirmed by Our authority; however, for certain reasons, We have ordered that it not be made public until the day on which it was published, namely, July 5th, 1888. (1) We deemed it necessary to communicate this to you, Venerable Brother, through these letters; for there are those who strive to defend and promote the word and the Scripture, and who contend that, when it comes to a Decree issued after death, it is permissible to resist it without impunity; moreover, We are aware that some are ignorant of the fact that this Decree was made, published, and promulgated without Our approval. Furthermore, this very matter separates and distinguishes the Sacred Council of the Inquisition from the Supreme Pontiff; in this, it is clear that there is a certain duplicity, with suspicions unjustly joined to it. We, indeed, are inclined to clemency by nature and by office; We have also been accustomed to receive with benevolence and love those whom We see to be eager to obey; nor do We easily tolerate such a departure from this custom of mildness in Ourselves, but nevertheless, We cannot but strongly disapprove of the conduct of some, which is harmful to Us and to the Apostolic See. It is well known to Us, Venerable Brother, that you have undertaken considerable efforts to ensure that this Decree be received with sincere and prompt obedience, as befits the children of the Catholic Church,

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by all within your clergy and people; it is regrettable that these efforts of yours have not yielded the result that We desire. Therefore, We urge you more earnestly to persevere in your endeavors, and to strive by all means to remove any cause of offense in this matter. As a pledge of Divine favor and of Our paternal benevolence, We impart the Apostolic blessing to you, Venerable Brother, and to your entire Archdiocese, with all Our love. Given at Rome, near St. Peter's, on the 1st of June, in the twelfth year of Our Pontificate. To the Venerable Brother, the Archbishop of Milan, Aloysius. LEO P. XIII. (1) You will find this decree in Vol. XX, page 397.

[*Latin ed. p. 711*]

711 EX 8. FROM THE CONGREGATION OF THE COUNCIL OF BARCELONA. REGARDING THE COMMUTATION OF A WILL. January 19, 1889. Through summary petitions. A COMPENDIUM OF THE MATTER. Four parish priests of Barcelona humbly present the following to the Holy See: "That Petrus Bigas, a regular priest, formerly of the Order of the Most Holy Trinity, in his last and valid will, established certain individuals as heirs, and in a reserved document, prescribed to them the obligation of establishing a simple benefice in the parish church of Saint Andrew, commonly known as 'de Palomar,' in the altar under the title of the Most Holy Trinity and the Blessed Virgin Mary of Remedy, and of fostering its cult. But since the goods assigned for the fulfillment of said institution are immovable properties, and the testator forbade the heirs from alienating the assets constituting the inheritance, it is impossible to fulfill the testator's will, because, according to the civil laws of Hispaniae, ecclesiastical benefices cannot be established from immovable properties, which the testator was not unaware of; therefore, the heirs earnestly request the Holy See to grant them the faculty to, notwithstanding the express prohibition of the testator regarding the alienation of inheritance assets, sell them, and convert the proceeds into public funds, so that from their revenues, the aforementioned benefice may be established, and the cult of the Blessed Virgin Mary, commonly known as 'de Remedio,' may be fostered." Asked for information and a vote, the Bishop responded as follows: "The heirs, having been brought before me, revealed the testator's secret instructions. The goods bequeathed by him consist of two houses, each estimated at a price of 7,500 livres, commonly called 'pesetas,' more or less, and ten public titles of revenue of Hispaniae, whose values amount to approximately 5,000 livres, from which a sum of approximately 20,000 livres can be obtained. In these aforementioned secret instructions, the testator established the founding of a benefice..."

[*Latin ed. p. 712*]

712 BARCINONEN. Concerning which, in the prayers, he designates the same patrons as the Orators themselves, and imposes upon the ben-

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eficiary the obligation of celebrating 60 Masses annually at the altar of the benefice on the prescribed days. Furthermore, the beneficiary of the altar shall be responsible for its care, shall be present to the local parish priest, and shall ensure that both the oratory and the library of the testator, which are located in one of the aforementioned houses, are properly maintained, absolutely prohibiting the alienation of these things. In addition to the aforementioned, the testator bequeathed ten titles, which constitute a total of 5,000 libris and yield an income of 3,000 libris. He also stipulated that one of the two houses, namely, the one in which the library and oratory are located, should be designated for the beneficiary's residence, and that the income from the other house should be applied to the establishment of three anniversaries, as well as the feast day in honor of the Blessed Virgin Mary, commonly known as "Dei Remedio," in the parish church, and he declares that it is his will that such instructions be strictly observed.

"Now, indeed, the benefice cannot be established, if it lacks sufficient revenues for the proper support of the beneficiary. The two houses cannot be maintained, unless they are sold, since in Hispania, the amortization of real estate is prohibited, and therefore it is impossible to preserve the library and oratory, which are completely devoid of merit, the value of which barely reaches 3,000 libris. In view of this, after careful consideration and after consulting with the executors of the will, and with their consent, the following is proposed to this Holy Congregation:

"I. That the aforementioned administrators of the will, as fiduciary heirs, be granted the power to sell the two houses, which are estimated to be worth 15,000 libris, with a clear conscience and with a safe conscience.

"II. That from such sale, they may establish, through titles of public debt of Hispania, the feast of the Blessed Virgin Mary of Remedio, and the aforementioned three anniversaries, to which fund they can allocate 2,000 libris, commonly called "pesetas," or approximately 4,000 libris."

[*Latin ed. p. 713*]

BARCELONA. 713 « III. Ut residuum venditionis ambotorum domorum, nempe 10,000 aut 11,000 librarum, applicari possint ad augmentum dotationis beneficiarii, cui, ut supra dictum est, testator solummodo designavit 5,000 librarum titulis Publici Debiti, et beneficiarii habitatio in una ex duabus domibus. Si EmiPatres hanc propositionem accipere velint, beneficiarius gaudebit pensionem 900 aut 1,000 librarum, quae quidem prorsus necessaria videtur ad honestam sustentationem. »

Disceptatio Synoptica: PETITIO DENEGANDA VIDETUR.

Age vero, secundum legem romanam et receptissimam, quae habetur in Nov. 22, cap. 2, « disposat unusquisque super suis uti dignum est, et sit lex eius voluntas. » Unde plane consequitur se statoris praescripta, tam quoad substantiam, quam quoad modum, deberi summise servari. Et quamvis

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certa sententia sit quod in piis fidelium voluntatibus summus Pontifex potestatem suam extendere et ea commutare possit, attamen Tridentinum, Sess. 7, cap. 2, docet id non nisi ex iusta et necessaria causa fieri oportere. Quin dicatur in themate hanc necessariam causam haberi, quippe quia civilis lex vetat bona immobilia ecclesiasticis beneficiis assignari.

Responderi enim potest, in themate civilem legem absoluto obstáculo haud esse, quominus voluntas testatoris impleatur. Siquidem cum fundator censum reliquerit 5,000 librarum, ex eo, etiam juxta civilia praecepta, fundari certe potest beneficium. Beneficio autem fundato, sufficit ut haeredes aut cessionem faciunt, aut usum fructum duarum domorum sacerdoti investito concedant, et omnia facillime composita habebuntur.

Quin subsumatur, improvide fundatorem iussisse, beneficium erectum iri partim saltem ex immobili dote, dum sciebat hoc civili lege vetari. Quandoquidem in primis retorqueri potest argumentum; nam cum fundator id praescrib-

[*Latin ed. p. 714*]

714 BARCINONEN. He writes that, although hindered, he clearly desires that his heirs, who are religious men, secretly and prudently accomplish what civil law forbids. It does not seem that this originates from the will of the founder; for anyone knowledgeable in political matters, even from afar, knows how unstable and subject to arbitrary decisions the payment of public taxes is, especially in Hispania. A FAVOR SEEMS TO BE WARRANTED. On the other hand, granting the requested favor entails this: it would be difficult to fully implement the will of the testator regarding subsistence without the conversion of real estate assets; the heirs would have to strive for this. And the dangers of usurpation by private individuals to whom civil law grants possession of houses would not be absent. Therefore, the conditional clause added by the testator, as if it were impossible, would rightly be set aside by law. However, if, in the hypothetical case that the conversion of assets is approved by the Sacred Congregation, the majority of the income should be applied to the benefit of the beneficiary, and only 200 *libellae*, or a portion of 4,000 *libellae*, should be reserved for the celebration of the feast of the Blessed Virgin, and for the anniversary; whereas the founder had ordered that all proceeds from the rental of one house be applied to this purpose, and that the beneficiary should only receive the use of another house and a census of 5,000 *libellae* from public titles in Hispania, this was deemed to be a matter of wisdom and foresight. With these considerations made, the question was asked: what should be answered to the prayers? RESOLUTION. The Sacred Congregation, having considered the matter on January 19, 1889, decided to respond: "For the

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favor, according to the will of the Bishop."

[*Latin ed. p. 715*]

71S MANDELEN. THE FOURTH DAY OF MOURNING. On January 19, 1889. Session 24, chapter 18, concerning reforms. A SUMMARY OF THE FACTS. On July 26, 1886, the Reverend Benedictus Petrini, archpriest and parish priest of the territory of Colle-lungi, in the diocese of Poggio Mirteto, died. The following day, his funeral rites were performed; and on the seventh day, a funeral Mass was solemnly celebrated in his memory. The wax which had been placed and lit on the day of the burial was, after the completion of the rites, taken and kept by the nephew of the archpriest; and on the seventh day, it was again brought forth into view. But on these days of mourning, a question arose concerning the remains of this wax. The parish priest of Casa Proto, being the closest, sought to claim the wax remains according to the synodal laws. Conversely, the wax was desired by the Reverend Rosati, who, being the only priest in the territory of Colle-lungi, had, at least in practice, and with the consent of the Ordinary, assumed the duties of the aging archpriest in the time preceding his death; to whom, moreover, the office of vicarius foraneus had been assigned in the archpriest's place; and to whom, finally, the office of administrator of the vacant parish was entrusted four days after the death of the aforementioned archpriest. A controversy arose, and since the Reverend Rossetti, the cellarer, was present before the court, he judged that the wax remains should be sequestered until the matter was settled. And so it was done. Then the parish priest of Facioni first appealed to the Sacred Congregation for the Council, in order to protect his rights. When the Reverend Rosati learned of this, he also sent letters to the Sacred Congregation in defense of his rights. The court, which had undertaken to examine the matter, refrained from further action, and requested information and opinions, which are given below.

[*Latin ed. p. 716*]

716 MANUELEN. A Synopsis of Disputations. DEFENSE OF THE PAROCHIAN AGAINST FACION. The principal argument of the Parochian against Facion is found in chapter 3, paragraph 13, of the statutes and regulations, where the following caution is read concerning the parish priests: "When one of the parish priests becomes ill, another, the one who is nearest, should come to attend to him, administer the sacraments opportunely, and offer all the offices of charity to him who is dying; and in the meantime, he should take care of that parish, until otherwise determined by Us, or by Our general vicar. And when his death follows, the foreign vicar shall immediately, in the presence of two witnesses, make an inventory of all the things belonging to the church. If the deceased parish priest himself was the vicar, this shall be done by the nearest parish priest."

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Furthermore, Facion states that, in the aforementioned case, the nearest parish priest must take over the care of the vacant parish; and he must also acquire the burdens, rights, and emoluments of the vacant parish. Among these rights and emoluments, the fees for funeral services should also be included, as the very part of Aversa admits. Therefore, the emoluments for the funeral of the deceased archpriest Petrini should, without a doubt, be given to the nearest parish priest. I say that this is the principal argument by which Facion defends himself; the other things that he presents, namely that the priest Rosati did not, in fact, serve as the substitute for the infirm and elderly archpriest, or that the office of foreign vicar was not demanded from him by the curia, are entirely false and erroneous statements, which are completely rejected by the curia in its informative letters, and finally, Rosati himself is discredited by witnesses; therefore, they do not deserve consideration. Furthermore, it is irrelevant that the parish priest Facion was unaware of the decree of the curia, by which the priest Rosati was renounced as the administrator of the parish of Colle on the fourth day after the death of the archpriest. For the decree of the curia did not lose its force because the parish priest Facion was unaware of it. Finally, the aforementioned party also wrongly appeals to chapter 18, session 27, of the Council of Trent; for there, the matter is about appointing...

[*Latin ed. p. 717*]

MANDELEN. 717 Regarding vicars who act as bishops in a parish where the parish priest is absent, and concerning the manner of electing parish priests; however, no mention is made of funerals. Therefore, one of the synodal constitutions is invoked based on the argument of the plaintiff. However, in regard to common law, nothing has been definitively established in this matter.

JURA SACERDOTIS ROSATI. But, contrary to the argument presented in the constitutions, the priest Rosati objects, stating that the cited prescription should not be extended to every case; but rather, it appears to be intended only for the specific instance where only one parish priest is present in a given village. If a coadjutor is also present, it should be decided that the coadjutor, rather than the nearest parish priest, should be assigned to the infirm parish priest, and after the parish priest's death, the funeral should be conducted. Furthermore, Rosati was not elected as a coadjutor by the archpriest, but rather was appointed by the Curia to supplement the archpriest's duties. Therefore, even from this point of view, his authority does not seem to have ceased after the archpriest's death. And although Rosati did not formally report his nomination from the Curia, nevertheless, if a priest is a legitimate coadjutor, provided he has been approved for hearing confessions, and it is known that there is no one else suitable, the simple approval of the Bishop is sufficient, even if given without prior examination. Innocentius XIII, *Constitutiones Apostolicae Ministerii*, and

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Benedict XIII, in the Council of Rome, in the year 1725. But, more importantly, the priest Rosati had been appointed as a *vicar forane*, in place of the infirm archpriest. Furthermore, the synodal statutes, chapter 4, paragraph 3, regarding *vicars forane*, state: "When one of the parish priests has reached the end of his days, the *vicars forane*, without delay, should confer with each other, and, after notifying us in writing or our general vicar of the priest's death, they should carefully describe the state of the parish, and safely store all books, writings, and documents pertaining to the church. In the meantime, they should entrust the care of souls to a priest who has already been approved for hearing confessions, until a new administrator is appointed." Moreover, since Rosati was already a *vicar forane*, and...

[*Latin ed. p. 718*]

718 MANDELEN. Approved for confessions, but with the consent of the Bishop, he was already a coadjutor in governing the parish of Colle, and it does not appear that anything prevents him from governing the parish by his own right, even if it is vacant. Therefore, even if he lacks other titles, Rosati, for the first four days after the death of the archpriest, governed the parish by his own right, as a foreign vicar; subsequently, he governed it as a spiritual administrator delegated by the Ordinary; therefore, the burdens and rights of the vacant parish, and with them the contentious matter of funeral expenses, rightly belong to him, and not to the neighboring parish priest. Indeed, the chapter concerning foreign vicars seems to somewhat overlap with the chapter concerning parish priests; but this suggests that the aforementioned chapter should only be extended to the extent indicated above, which is also proposed by the court, and which is finally suggested by the rules of common interpretation, namely, that the neighboring parish priest should not be called to govern a neighboring vacant parish, unless other legal remedies are lacking. Furthermore, this also militates against the parish priest Facioni, since he was not present on the day of the deposition, and if he was present at any time, he always took the second side, as is further evidenced by the frequently mentioned letters of the Ordinary, which are now being written. Therefore, the Ordinary says: "Before I speak of the prayers of the Reverend Monsignor Caesar Facioni, concerning the house of the Providentia, commonly called Casa Prota, of this diocese, some things seem to me to need to be stated beforehand, so that it may be more easily understood on what basis the rights of the aforementioned parish priest Facioni are founded. " The Reverend Monsignor Benedict Petrini, archpriest and parish priest, and foreign vicar of the land of Colle, being weakened by old age, could no longer properly perform his parochial duties, which, with the consent of his legitimate superior, were being carried out by the Reverend Nicholas Rosati, a priest of the same land of Colle, to whom the office of foreign vicar was also legitimately

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entrusted on March 13, 1886. No one should consider the aforementioned priest Rosati to be...

[*Latin ed. p. 719*]

MANUELEN. 719, it is said, was always ready, both for the assistance of the sick and for other ecclesiastical duties. "When the parish priest of Petri reached the end of his life, the priest Rosati performed all the offices of charity for him, administered the sacraments, as he himself asserts in the document which I submit to Your Most Reverend Eminence, and after his death on the 26th of July, 1886, at the eleventh hour before noon, the following day, at the command of the deceased's nephews, he performed the funeral rites, celebrated Mass in the presence of the body, which he carried to the tomb." "But the Reverend Father Caesar Facioni, parish priest of the house of Provida, Casa Prota, being connected to the parish priest of Petri by kinship, visited him only when he was at the point of death, and after his death, on the following day, after Mass was celebrated in the church of Colle-lungi, he immediately departed for Rome, and for five days, from the 27th of July, he was absent from his residence." "Meanwhile, the archpriest Rosati informed the episcopal curia of the death of the archpriest of Petri, and he was ordered by the Ordinary to assume the office of parish administrator as of July 30, 1886." "But the priest Facioni, for reasons unknown to me, does not hesitate to assert in his writings that the archpriest of Petri continued to exercise the office of archpriest until the very end of his life, and moreover, I do not know how he could have failed to know that the priest Rosati had legitimately received the mandate from the Ordinary to govern the parish of Colle-lungi, which ignorance cannot be admitted, since he himself wrote to Facioni: 'D. Nicola Rosati, who, at the time of the funeral, was acting as the parish priest.' These things arose from the conversation that Facioni had with him in Colle-lungi, and later in the House of Provida, with the episcopal chancellor. Furthermore, he does not accurately explain what happened concerning the censer, which Facioni claims for himself. It should be noted that on the day of the deposition of the deceased, the parish priest Facioni was not present at the funeral, but, as I have explained above, as soon as Mass was celebrated, he departed from Colle-lungi, and on that day, a certain nephew of the deceased removed the censer and other objects placed around the coffin and on the altars, and kept them with him, as is evident from what the archpriest Rosati wrote."

[*Latin ed. p. 720*]

720 MANDELEN. "Et vere, die septima, funus perficitur, missam cantavit sacerdos Rosati, iam oeconomus parochus, et in diaconi officio ministravit sacerdos Facioni. Missa completa, disputatio facta est de pertinentiis cerarum, sed cum supervenisset Cancellarius episcopalis, hic censuit, pro bono pacis, et ad removenda scandala, questionem componere,

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ita ut contendentes ceram dividerent pro aequali portione inter se; sed Facioni recusavit, quare involuta et obsignata cera apud sacerdotem Rosati depositata fuit." "Tum, Pro-Vicarius generalis Archipresbyter ecclesiae cathedralis Raphael Rinaldi utrique scripsit, ut quisque iura sua proferret, sed sacerdos Facioni, cum ad istum sacrum Ordinem recursum fecerit, nullum iudicium prolatus est." Quae cum ita sint, haec humillime E. T. subiicio. "Vera sunt quae ex Synodo dioecesana a sacerdote Facioni allata sunt, sed intelligenda esse, mihi videtur, pro illis paroeciis, in quibus solus parochus existit, et hoc in casu parochus vicinior subiacere debet vicario foraneo loci. Habetur enim in eadem synodo, sess. III, cap. IV, p. VII: 'Quum aliquis parochorum extremum obierit diem, ad illius paroeciam sine mora (vicarii foranei) se conferant, et monitis per literas de ipsius morte Nobis, vel Vicario nostro generali, res paroeciae accurato inventario describant, atque in tuto reponant libros, scripta, et documenta omnia ad eam spectantia. Interim, animarum curam sacerdoti ad confessiones iam approbato committant.'" "Haec omnia facere sacerdos Rosati, vicarius foraneus, non solum conatus est, sed etiam in extremis parocho Petri, ni charitatis officia praestitit, sacramenta ministravit, funus de mandato defuncti nepotum gessit, quin ceram perciperet, quae ab uno ex nepotibus, ut supra exposui, levata fuit. Cum autem die septima funeralia facta fuere, sacerdos Rosati iam oeconomi parochi officium de Ordinarii mandato exercebat, quod sacerdos Facioni confitetur, et haud ignorare poterat."

[*Latin ed. p. 721*]

MANUELEN. 721 "Given these circumstances, I dare to implore [the authorities] that the matter be resolved and the wax be granted to the priest Rosati. After considering all these things, the purpose was to resolve the doubt concerning whether and to whom the remnants of the wax belong in this case. RESOLUTION. The Sacred Congregation of the Council, having knowledge of the matter, on January 19, 1889, decided to respond: Affirmatively, in favor of the priest Rosati, and furthermore. REGARDING THE DIVISION AND ERECTION OF THE PARISH. January 19, 1889. Session 21, chapter 4, concerning reforms. SUMMARY OF THE CASE. On August 4, 1883, concerning the doubtful matter of whether and how the division of the parish of Saint Mary and the erection of Saint Anthony should be considered in this case, the E.P.P. [Ecclesiastical Province] responded: Negatively in all respects, and furthermore. The situation was as follows. The parish of Saint Mary, the head of the republic of the same name, consists of two parts, the western and the eastern. The western part includes the old town of Saint Mary, located on the summit of Mount Tiano, above a cliff, where the parish church is also located. From there, through three roads, one 1800 meters long, another 1400 meters, and a third 1100 meters, and this one descending through the folds of the mountain, a path leads down to the eastern part of the parish, to the suburb of Saint Anthony, which is

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commonly called Borgo maggiore or the market. The town of Saint Mary is located to the west, while the suburb of Saint Anthony is located to the east; each, from its own side, has a sufficiently large field; so that the eastern boundary of the territory is 4 or 5 kilometers from the suburb.

[*Latin ed. p. 722*]

722. FERETRANA is located approximately five to seven kilometers from the town of Oppido and from the parish church. The inhabitants of this suburb, and of the adjacent territory, had been petitioning to have their church of Saint Anthony made a parish church. This area was said to have a population of 1100, while the town and its territory had 1300 inhabitants. Forty-five families were urgently requesting this favor, and they had elected a commission to oversee all arrangements. The government consented, with the condition that the right of patronage which it held over the parish be reserved, both for the main church and for the new parish. The Bishop also recommended the granting of this favor, but insisted on the concession being granted. Two societies from the suburb were prepared to provide a house and an endowment to establish a suitable new parish. However, the pastor of the main church opposed it; he was the one who had been appointed patron, and, after a hearing, he prevailed. He himself promised to provide a chaplain for the church of Saint Anthony, and to appoint an assistant for the inhabitants of the suburb; thus, the necessity for the erection of a new parish seemed to be obviated. Furthermore, no suitable and free property appeared to be available for the new parish. Due to these and other reasons, the aforementioned resolution was reached, which the Bishop had initially deemed inappropriate. However, in June of 1887, a petition was presented to the Most Holy [Father] by the commission of the suburb of Saint Anthony, again requesting the erection of a new parish. The key points or reasons upon which the petition is based are also concisely explained by the Bishop in his report, which he was asked to provide after the presentation of the petition. He stated: "It would indeed be desirable that these same petitions might have a better and more favorable outcome. For all that has been explained, the nature of the place, and especially the neglected care of souls, and the salvation of the faithful, urgently demand it." "Indeed, there are legitimate reasons for the division and the erection of a new parish: there is the distance of the place from the parish church to the suburb, and especially for the inhabitants of the suburb, for whom it is not only a matter of distance, but..."

[*Latin ed. p. 723*]

The number 723 is mentioned, but also four and five thousand: this is present, besides the distance, the difficulty of the roads, which, although paved, are intolerable in winter due to heavy snow, or the treacherous

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ice that hinders walking, and in summer due to the scorching heat, as I have explained more fully in previous letters, especially on December 27, 1882. This difficulty in access and egress makes it so that neither the inhabitants of the *Suburbium*, nor especially the farmers who live further away, ever almost reach the parish functions held in the church located on the summit of the high mountain, and hear the salutary instructions. "There is also in that part of the soul a number of one thousand three hundred, which is almost half of the souls of the entire parish. The very nature of the place indicates a division: for the *Suburbium* is surrounded by a mountain on one side, and a hill on the other, and extends towards the east and north into a slightly sloping rural plain, with houses scattered here and there; and the parish church retains, besides the city, territory to the south for agricultural cultivation." "The *Suburbium*, situated at the foot of the mountain, is completely separated from the city; and in recent years, especially, it has grown with many buildings and houses; there live respectable citizens, men from the councils and even from the government of the Republic; there, commerce and markets are carried out with a large gathering of people; there is, so to speak, the life of the Republic itself; and what is necessary is found there. However, what is most important is completely lacking; and that is the care of souls, which is entirely neglected, so that even young people are deprived of the proper Christian instruction, and the faithful are left without the frequent and salutary instruction that the circumstances, and especially the needs of the times, demand! The sick often lack the necessary assistance. Therefore, pastoral vigilance is absent, which fosters charity among the people, prevents discord, and resolves disputes that arise; it protects good morals and religion; and finally, it promotes good and repels evil. For although the Archpriest has two chaplains, one of whom is with him, and the other is not in the *Suburbium*, but..."

[*Latin ed. p. 724*]

724 In Feretrana, near the walls of the City, or due to the distance of the places, or for other reasons, priests are not always called upon, nor do they conveniently appear. Therefore, the care of souls in the Suburb is not something that can be entrusted to a chaplain, compensated with only thirty gold coins, nor is it something that can be believed in, nor abandoned. > "These matters have been explained more fully in my previous letters; here I have only touched upon them: I do not repeat what I said about the new parish that needs to be endowed; nor do I speak of the right of patronage, which the government of Cento reserves for itself by law, a right that it does not wish to diminish, as it pertains to the patronage of the parish church; nor do I speak of the church in the Suburb, in which a new parish is to be established." "Although these things are and are as I have said, the contrary decision of this Sacred Congregation suspends the division and the erection of the new parish with the formula 'It is not

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expedient.' Nevertheless, the inhabitants of the Suburb have not ceased to present new requests, both verbally and in writing, demonstrating the necessity of a new parish, especially the petition of June 6, 1884, sent to me by many citizens of the Republic, which I forwarded to this Sacred Congregation in accordance with the previous decision, in my letters of July 2, 1884, which I renew, having heard that they were not presented to the Sacred Congregation." "Then, in my letters sent to the Archpriest Giannini, I inquired about the spiritual care in the Suburb, who responded in letters of July 19, 1885. But the chaplain informed me verbally that he did not wish to remain in the house prepared for him in the Suburb, which was almost public, citing certain indignities. The Archpriest refused to hand over the one hundred gold coins to the chaplain Angelini, so that he might find a more suitable house at his own discretion, as I proposed to him. And so, the situation remained in the same lamentable state, indeed, the care of souls was neglected even more after the decision than before. The parish, aware of the revenues of the parish church, refuses the requested subsidies, because it wishes to devote its assets to the stable and permanent care of souls." "Furthermore, the inhabitants of the Suburb do not cease to demand and urge the establishment of a stable care of souls; and this is justified and deserved."

[*Latin ed. p. 725*]

"The documents from FERETRANA, as I have also stated in my report concerning the relationship of the Diocese to this Sacred Congregation, indicate that there is a need to address the spiritual needs of the Suburb through the establishment of a new Parish; or, alternatively, a permanent Vicariate, since nothing can be expected from the Parish Priest, who always acts with undue harshness, I know not by what reasons. Therefore, I judge it necessary to remove the suspension regarding the division and the establishment of a new Parish, in order to satisfy the just desires of the suburban people, and my own, and those of my predecessors, for the good of souls.

"Indeed, all those doubts and fabrications, with which the opponent adorned and from the beginning established his position, seem to be of no importance and should be set aside. Perhaps he has forgotten that the most esteemed Council, having before its eyes the petitions for the erection of a new Parish, clearly responded: 'Nothing stands in the way of the erection of a new parish church, provided that the patronage of the Government is maintained, both in the new church and in the old.' It concerns the care and salvation of souls, and the establishment of a Parish, which does not disturb or upset the state and public affairs, but rather strengthens and supports them; and which perpetually fosters peace, concord, and tranquility among the citizens. From this, it is clearly evident how much importance must be given to the principle upon which the entire argument of the opponent is founded, which seeks to overturn the most excellent Decree of the Govern-

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ment through empty interpretations!

"As for myself, I will not cease to strive, so far as my office and conscience permit, to secure the salvation of the Christian faithful, so that the care of souls may be established in the Suburb of St. Mary; and not merely any spiritual guide, but a Parish Rector is required, lest more serious damages arise day by day, unless timely provision is made.

"All of these things, which, for the sake of my office, I have once again presented concerning this most important matter, I humbly submit to this Sacred Congregation, in whose most wise counsel I hope that the requested grace will finally be granted, especially since the demands of the suburban people are supported by legitimate reasons."

[*Latin ed. p. 726*]

726 FERETRANA « Quapropter, rescriptum est: Hoc iterum proponatur et notum fiat Episcopo, qui partes admonet, et illis terminum praebeat ad deducenda ulteriora, et de rebus infantibus certiorem faciat. » Partes quidem admonitae sunt, et illis fatalia indicta. Sed ex parte parochi nihil ad acta est relatum, praeter quam dam eius procuratoris epistolam, in qua quaerimoniae fiunt ob novam propositionem causae, quippe quae iam in rem iudicatam transierat. Suburbii autem cives patronum ad suam causam agendam nuncuparunt, qui novae paroeciae erectionem enixis viribus tuitus est. Quibus praemissis, propositum fuit diluendum Dubium An sit standum vel recedendum a decisis in casu. RESOLUTIO. Sacra Congregatio, re iterum discussa sub die 19 Ianuarii 1889, censuit respondere: « Recedendum a decisis; ita tamen ut novum beneficium parochiale, neque ex bonis antiquae paroeciae, neque ex nova edituum assignatione supremi Consilii dotandum, sit liberae collationis, prout de iure. » (1) 1 BAJONEN. SYNODI DIOECESANAE Die 10 Februarii 1889. Per summaria precum - COMPENDIUM FACTI. Episcopus Raionensis die 14 Septembris anni 1888 Sanctam Sedem adiit, et illi pandidit, « se ad mensem Octobris synodum dioecesanam indixisse. Quum autem, ait, dioecesis sit amplissima et quincentae numerentur parochiales ecclesiae, quarum plurimae plus centum chiliometra distant. » (1) Confer, quoad dismembrationis materiam, Volumina I, 520 et 543; III, 369; XI I, 287; XIII, 60, 293, 299; XVIII, 315.

[*Latin ed. p. 727*]

"Bayonne. Since Bayonne is distant 727 leagues from the episcopal city, it is impossible for all priests who have care of souls to attend the Synod; it is necessary that, when one parish priest is absent, a neighboring priest be present to oversee the care of souls. Therefore, notification has been sent to: 1. The canons and chapter of the cathedral church; 2. The honorary canons; 3. The archpriests and deans, who number forty-two; 4. The superior and professors of the diocesan seminary; 5. The superiors of certain ecclesiastical colleges; 6. In each deanery, a parish priest is designated by

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the deans, who will attend the Synod in his own name and in the name of his colleagues."

"Therefore, the aforementioned Bishop of Bayonne requests that Your Holiness declare this method of convocation, which seems to be the only one possible in our dioceses, to be valid, and deign to approve it with Your supreme authority."

Synopsis of the Discussion. PRAYERS TO BE ANSWERED.

"Indeed, with regard to those who are to be convened to the diocesan Synod and are to participate in it, the Council of Trent, Session 24, chapter 2, concerning reform, states: 'Also, diocesan Synods should be held annually; to which all, even those who are exempt, should be required to attend, unless they are excused, and who are not subject to general chapters; but those who are in charge of parish churches or other secular churches, even those annexed, must attend the Synod, whoever they may be.'"

"Since the Holy Synod commands that the pastors of parish churches, whoever they may be, must attend the diocesan Synod, it follows that all of them must be summoned to the Synod, and none can be excluded or overlooked. This is confirmed by numerous resolutions of the Holy Congregation, which are found in Benedict XIV, *De syn. dioec.*, book 3, chapter 4. Therefore, the exclusion of several parish priests, as requested by the Bishop, is contrary to the law. Furthermore, it is contrary to the law to send notification to the superior and professors of the seminary, and to the superiors of certain ecclesiastical colleges. Indeed, the Holy Congregation, on December 15th..."

[*Latin ed. p. 728*]

728. BAIONEN. In the year 1629, the Bishop of Bagnoregio declared that he could compel simple priests, who were not beneficed within his diocese, to attend the Synod, when matters pertaining to the reform of morals, or to any matter concerning the entire clergy, or the implementation of decrees made in a provincial synod, or if custom requires it, were to be discussed in the Synod. Therefore, those who are not parish priests, with the exception of the canons of the cathedral, cannot always be compelled to attend the Synod. Although it is true that the Ordinary can summon whomever he wishes to consult with, and that there is a law that the Bishop should ratify decisions in such a consultation; nevertheless, such a gathering of a diocesan conference does not truly merit the name of a Synod, as is evident from the response of the Sacred Congregation of Councils given to the Bishop of Canaries in the year 1720 (Syn. dioc. lib. 1 cap. 2 n. 4), and therefore, such a proceeding would not satisfy the law of Trent concerning the holding of a diocesan synod annually; and, moreover, in such a gathering, synodal judges could not be appointed, nor synodal examiners approved; for the Synod desires that the prior consultation of the Synod should be present in the appointment of judges, and that the consent of the majority of the

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Synod should concur in the selection of examiners. Therefore, a diocesan conference is not sufficient; because it is a different college; and the power granted to one college is not given to the other. PRECEDENTS ARE TO BE CONSIDERED. However, although, according to the principles of law, this is true and proceeds accordingly; nevertheless, by reason of equity, it has not been uncommon for a diocesan conference, with the legitimate permission of the Sacred Congregation, to take on the name and force of a true diocesan synod, as was the case, for example, when the Archbishop of Mechlin obtained this faculty for a decade in the year 1872; and similarly, to the Bishop of the Five Churches, it was permitted by a rescript of June 11, 1860. And this is consistent with sound reason; for in large dioceses, it would be difficult and burdensome to gather all the parish priests together with the Bishop; and therefore, if some of the parish priests are joined together with delegates from others, along with learned men who exercise a teaching ministry,

[*Latin ed. p. 729*]

BAJONEN. 729 priests are found in seminaries; this number appears sufficient to achieve the end intended by the Council of Trent. Nor is the law of dispensation new; for Benedict XIV mentions in letters of the Holy Roman Church that this matter is greatly alleviated thereby. "When the Bishop of Caria, he says, during the occasion of a visitation to the Sacred Threshold, transmitted to the aforementioned Congregation a report on the state of his Church, and also indicated to it that it was impossible for him to hold a diocesan synod; the Sacred Congregation, having given him letters in the year 1720, responded as follows: - It remains for me to answer your requests. First, you bring to our attention the difficulties of holding a diocesan synod, and indeed, they are very great, and certainly prevent any ecclesiastical assembly from being held. However, the Sacred Congregation desires to be more certain whether, in each island, it would be possible, for a defined period of time, set by you through an edict, for all, or the greater part of the clergy, to whom it is proper to attend the synod, to conveniently assemble; delegating their duties to one or more representatives; and whether those elected would be able, upon receiving authentic proof of their mandate, to likewise convene with you at a designated time, to report on the state of their churches, the morals of the clergy and the people, religion, piety, the splendor of the temples, the administration of sacred places, and all other matters that would be necessary. Having received these counsels, I would then command what should be done, as if by the decree of the synod, and would order them to bring this to their people, and to ensure that it be carried out. For in this way, you would obtain the appearance of a synod, and would derive the greatest benefit from it." With these things noted, the question was raised as to how dispensations should be granted. RESOLUTION. The Sacred Office of the Council, after deliberation on February 16,

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1889, decided to respond: For a period of ten years.

[*Latin ed. p. 730*]

730 COELSONEN. QUESTIONS CONCERNING DISTRIBUTIONS. March 3, 1889. Session 2, Chapter 3, Concerning Reforms. SUMMARY OF THE MATTER. The Vicar Capitular of Coelsonen, through certain letters, first presented the following: "According to the decree of the Most Holy Trinity, canons who, without just cause, are absent from the choir for three months, lose the distributions which are given to those present. Their absence, if the conditions continue, results in the loss of half of the fruits for the first year. Since, however, the obligation of attending conventual Masses and other services undoubtedly weighs upon them, even though they are absent, the Reverend Procurator humbly requests that Your Eminence deign to decide whether an alms should be taken from this kind of Mass, whether from the distributions for the first three months, or from the two-thirds of the portion which remains with the absent canon. And if it concerns the first year of absence, whether it should be from the half that goes to the Ordinary, or from the other half which the absent canon still receives." After a few months, new letters were presented, requesting the following: "1. Are canons who prolong their absence from the choir without just cause beyond three months, obligated to support the expenses of Masses from half of the portion of the fruits which is granted to them? "2. Is it just that someone who attends the choir for a week in place of canons who have been absent for more than three months, and to whom is permitted to receive ten Spanish reales for each week from the fund for the absent, should receive this before the distributions are given to those present?" And when he had asked that the questions be clarified, the response was: "Regarding the first point, I find the greatest difficulty in whether the stipends for conventual Masses, which are given daily in..."

[*Latin ed. p. 731*]

In cathedrals and collegiate churches, for the benefit of founders and benefactors, the following provisions are made concerning the canons: those canons who are legitimately absent from the choir for the first three months are to have deducted from their share of the fruits, relative to them, half of the fruits; or, alternatively, the other half, which is granted to them during that first year. "Regarding the second point in this church, as in others, a third part of the fruits is distributed to those who, without cause, are absent from the choir and who are interested in the service. Among the canons, those who perform the service for the absent, that is, for those who are absent without cause for more than three months, are to receive ten Spanish reales for each week, from the aforementioned third part, before each distribution. I therefore ask: can this be the case?" And when again urged to "refer to the legitimate custom," he replied, "there

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is no custom, of which we are speaking, that has been established in the prayers mentioned in the second statute, but rather that some desire to establish it. Thus, I have seen it since the year 1876: indeed, neither the constitutions of this cathedral say anything about this matter."

Synopsis of the Discussion. Therefore, there are three points that are brought up in these letters that need to be clarified. First, it is asked whether alms should be deducted for the canon who celebrates the conventual Mass in place of a brother who is legitimately absent due to the three synodal months; second, whether alms should be deducted if he celebrates in place of a brother who is illegitimately absent, that is, for more than three months; and finally, whether the payment of ten Spanish reales, which is 250 livres, can be given to the canon who performs the service each week for a brother who is illegitimately absent, by deducting that payment from the fund for the poor.

Indeed, in law, it is certain that alms for the conventual Mass must be deducted from the mass of distributions if such a mass exists. Certainly, Pope Benedict XIV in the constitution *Cum Semper Oblatas*,

[*Latin ed. p. 732*]

732 COELSONEN. Concerning the excuses and equivocations of those who considered themselves exempt from applying [the benefit] to this [mass], this [document] states (number 18): "Another exception was that the conventual Mass is not always celebrated by canons or dignitaries, but sometimes also by beneficed clergy or those in residence, and it seems less equitable for these to be entirely without alms for the celebration of the Mass, which ought to be provided; therefore, it is also advisable to inquire whether it should be taken from the mass of distributions." The Sacred Congregation of Rites has always observed this practice, as is evident from *Ferrariensis*, March 18, 1719, where, among other doubts, these are read: "I. Are canons, dignitaries, those in residence, and chaplains of the chapter, who are all bound by custom and tradition to celebrate conventual Masses in the cathedral church, also bound to apply [the benefit] to them for the benefit of the benefactors? And to this, affirmatively. II. Must those who celebrate and apply [the benefit] to conventual Masses pay the alms from the chapter? And to this, affirmatively. VII. Should the alms be taken from the mass of distributions, or from the fruits of the individual canons' prebends? To which it was answered: To the first, affirmatively; to the second, affirmatively; to the seventh, it should be taken from the mass of distributions." Thus, also, among other things, in *Monasterien. Visitation*, December 6, 1845; *Vallen. Concerning the alms of the conventual Mass*, August 22, 1874, through summary decrees. Indeed, if in the chapter of Coelsonen a mass for distributions were held, the matter would already be settled. But since it appears that something else occurs, and each canon receives his particular prebend, or pension, assigned by the Government,

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as in most other places, so also here; therefore, a subordinate question arises: namely, how should this system of stipends be arranged for the conventual Mass? To which it can be answered, first, that the laws concerning distributions are to be observed in the same way concerning this matter, with the only difference that in the first case, those who are absent do not receive the distributed alms at all, while in the other...

[*Latin ed. p. 733*]

73. And those who are absent are held to pay the fine, which corresponds to the amount of the distribution, as has been declared in several places by the Holy See, as in *Nullius* (Decree), Dist. 20, December 1738; in Eugubina (Punctationes), April 5, 1783; and in *Unilinem* (Decree), September 13, 1856. Therefore, also in our case, applying the principle of "like to like," the alms which ought to be taken from the distributions appear to be deducted from the amount of the fines or penalties. And therefore, in the absence of the common mass, the alms for the conventual mass ought to be taken from the fines with which the absent are penalized; nor, at least ordinarily speaking, can the absent be obliged to pay a further sum for the stipend of the conventual mass. For the abandonment of the distributions, or of the choral offices, seems to be a sufficiently strict and almost punitive measure: for, according to Lucidi, *loc. cit.*, the loss of the distributions is the first penalty of the absent; and the conventual mass is one of the capitular offices. Conversely, some objection, although perhaps not valid, might be raised from the theory which holds that the obligation of the conventual mass is proper and attached to the prebend. But as to how far this is offensive, the Most Reverend Fathers will judge; since these two things do not seem to imply that any office is attached to the prebend, and yet that its omission is punished solely by the deprivation of distributions. Indeed, this is proper to the offices and duties of the choir, among which the celebration of the conventual mass is also included. Furthermore, the obligation of the conventual mass appears to weigh more heavily on the entire body, than on individual canons directly, as appears from the decrees of May 12, 1759 and February 9, 1760; and from Terracina, September 5, 1627. Nor is a distinction to be made with regard to him who is illegally absent for more than three months; for, according to recent and authoritative resolutions of the Holy See, the illegally absent can be deprived by the Bishop of half of all fruits, even those properly belonging to the prebend; but he does not seem to be subject to further punishment; and still less to a punitive fine.

[*Latin ed. p. 734*]

CONCERNING. 735. It seems that this matter can be handled in a similar way, due to the particular weekly labor, which I suppose consists in the intonation of the Office and other similar duties. Conversely, the principle that faults are to be divided proportionally and universally according to

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what is present, applies. With these premises, the following questions were proposed:

I. Whether alms for the conventual Mass, which is celebrated by some chapter member due to the legitimate absence of another, should be taken from the sums which the absent one pays in such a case.

II. Whether the same should be observed when a canon is absent for more than three months without legitimate cause.

III. Whether a stipend of ten regal coins can be taken from the fund for faults and given to him who serves the weekly office in place of the absent one.

RESOLUTION. The Sacred Congregation, having discussed this matter on March 23, 1889, decided to respond as follows:

To I and II: Affirmative.

To III: Negative.

FROM WHICH WE GATHER:

I. That the conventual Mass is to be offered by all chapter members, whether canons or missionaries, through alms.

II. That this alms for the conventual Mass should be taken from the distribution mass, if it exists; and to the extent that it does not exist, from the sums which the absent one pays.

III. That such a rule is to be observed both in the case when canons are absent for less than three legitimate months, and also if they are absent for more than those three months established by law.

IV. In the matter under consideration, as an abuse, a custom, not uncommon in long-standing use, is to take from the fund for faults a stipend, to be given only to him who performs the weekly office in place of the absent one.

[*Latin ed. p. 735*]

734. Regarding the omission of choral duties, for which satisfaction appears to be provided through stipends. However, all of these matters, as is evident, have been discussed in order to address difficulties that may arise in the case where no fund or mass is available in the chapter for compensating for the labor of the conventual Mass. But I will not fail to recall further that the Sacred Congregation of Clerics has often sought to remedy this evil. For, in order to remove dissensions and to promote easier administration, it has frequently ordered that this fund or mass for the conventual Mass be separated, even in those chapters where the benefices are administered individually. As an example, in the Visitation of the Monastery of Limoges, on December 6, 1835, in response to the question, "Whether the Vicar of the Cathedral Church of Limoges is obligated to offer the conventual Mass

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gratuitously for benefactors; or rather, whether a stipend must be paid to him for this offering by the Chapter, in the case where no such fund exists," the response was: "Negatively to the first part; affirmatively to the second, from a mass to be collected by the prudent judgment of the Bishop, through contributions from the revenues of all the benefices." The same was decided in Herbipolis, in the Acts of Prayers, on June 2, 1860, where the Sacred Congregation of Clerics decreed: "The Vicar is to be obligated to offer the conventual Mass in turn with the canons, but a stipend is to be paid to him from a mass to be collected by the prudent judgment of the Bishop, through contributions from the revenues of all the benefices." In both of these cases, we are dealing with benefices that consisted of pensions paid by the Government. Finally, regarding the third point in which it is asked whether one who is legitimately absent for a week may receive ten regales from the other capitulars, taking them from the fund for errors, I observe first that a small matter is involved. For ten regales are said to amount to 2.50 florins. Furthermore, in favor of the affirmative opinion, there is the preceding theory regarding the conventual Mass; for if a stipend may be deducted from the common fund for its celebration, then it is certainly permissible to do so in the case of a legitimate absence.

[*Latin ed. p. 736*]

736 FROM THE SACRED CONGREGATION FOR RITUALS, A DECREE CONCERNING THE BEATIFICATION, OR DECLARATION OF MARTYRDOM, OF PETER ALOYSIUS MARY CHANEL, PRIEST OF THE SOCIETY OF MARY, PRO-VICAR APOSTOLIC OF WESTERN OCEANIA. CONCERNING THE DOUBT: Whether, with the approval of the signs and miracles, and considering that the cause of martyrdom is clearly illuminated and confirmed by many things, it is safe to proceed with the beatification of the Venerable Servant of God? Great and wonderful things, born from that fire which Christ came to send into the world to ignite, God, with His ineffable providence, has deigned to manifest even in this age, especially among those athletes who, zealously pursuing His zeal, have striven to spread the knowledge of the Evangelical truth throughout the lands. Among these, the Venerable Servant of God, Peter Aloysius Mary Chanel, shines most brightly, who, burning with a seraphic charity, undertook to announce to peoples sitting in darkness and in the shadow of death the new and living way, which Christ initiated. He, in the year 1837, having arrived from the shores of Galliae to the island of Futuna, illuminated that region in a remarkable way with the sanctity of his life and his preaching; and he endured hardships, hunger, and mockery with a cheerful spirit always, even until death, rendering good for evil to his persecutors. God, therefore, who, among the first heralds of the Gospel, had chosen this servant to bring the Christian name to those distant peoples throughout the world, made him worthy to consecrate those very

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shores with his own blood, as the Protomartyr of Oceania, confirming this glorious testimony of faith with many signs and wonders. These signs, together with the martyrdom and the cause of the martyrdom, having been thoroughly examined in a threefold investigation, were declared by a decree of the Sacred Congregation of Rites on November 26th of the preceding year, to be true, by the supreme authority of His Holiness, Pope Leo XIII. However, the doubt remained to be discussed, whether this Venerable Servant of God could safely be enrolled among the Blessed.

[*Latin ed. p. 737*]

DECREE 737: What was proposed before the Most Holy Lord, Our Pope Leo XIII, in the meeting of the Congregation for the Sacraments, on the eve of the Ides of March of the current year: all, both the Most Reverend Cardinals presiding over the Sacred Rites, and the Consultor Fathers, responded affirmatively with unanimous consent. The Most Holy Lord, however, considered it necessary to offer fervent prayers, so that He might obtain greater help from the Father of lights in so grave a matter. Finally, on this solemn day, when the King of Glory, triumphant over all the heavens, ascended, in order to satisfy the most fervent desires of the Society of the Marists, after a sacred ceremony performed in the Vatican Palace chapel, adjoining the more noble hall, before the Most Reverend Cardinals Charles Laurenzi, Prefect of the Congregation for the Sacraments, and Angelo Bianchi, Relator of the Cause, as well as the Reverend Father Augustine Caprara, Promoter of the Holy Faith, and myself, the undersigned Secretary, He decreed: That it is permissible to proceed to the solemn Beatification of the Venerable Servant of God, Aloysius Mary Chanel. And He ordered that this Decree be made public and recorded in the Acts of the Congregation for the Sacraments, on the third day before the Kalends of June, in the year 1889.

CHARLES CARD. LAURENZI, Prefect of the S. R. C.

L. ”S. VINCENTIUS Nussi, Acts, Vol. XXI. page. COLIT. S. R. C. Secretary. 47

[*Latin ed. p. 738*]

738 APPENDIX VII. In which are recounted more decrees of the Holy Congregation of Rites. URGELLEN. Reverend Father Joachim Solans, Professor of Holy Liturgy at the Seminary of Urgellen, with the consent of his Most Reverend Bishop, humbly proposes the following questions to the Holy Congregation of Rites, namely:

Question I. It is the common practice in the churches of the aforementioned Diocese to receive the people’s offerings at the altar rail after the reading of the Offertory, especially on more solemn feasts. However, some offer the Holy Cross, while others offer the stole, or the maniple, especially to men, for kissing, while saying: ”May your offering be accepted by God.” The same is observed in funeral Masses with regard to the kiss of the stole

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or maniple. Can this practice continue, especially since it cannot easily be discontinued?

Question II. Since there is not a single, identical opinion among the authors, and the rubrics do not speak so definitively about the genuflections that must be made by the ministers during the solemn Mass, both before and after the Consecration, the following is asked:

1. Whether the Deacon and Subdeacon ought to omit the genuflection after they have ascended to the altar, after the Confiteor, and also before they ascend to the side of the Celebrant after the intonation of the Gloria and the Creed, and at the Sanctus, and again before they descend to their place in the middle of the altar, as some wish; or rather, whether these genuflections should be made according to the rule that others transmit, namely that the ministers should genuflect in the place from which they depart, but not in the aforementioned cases, in the place where they arrive, as is commonly observed?

2. Whether, after the Consecration, and therefore also when the Most Holy Sacrament is exposed, the ministers should genuflect only in the place from which they depart, but not in the place where they arrive, as some teach; or rather, not only in the place from which they depart, but also in the place to which they arrive, when, for example, they ascend to the side of the Celebrant or descend from there, and also when they pass from one side to the other, omitting the genuflection in this last case in the middle of the altar, as others prescribe, and as is commonly done?

Question III. Is it possible to maintain the custom by which the Deacon, in the solemn Mass, raises the back fringes of the Celebrant's cope even while the latter is pronouncing the words of the Consecration?

Question IV. Does the Deacon and

[*Latin ed. p. 739*]

XVII. Subdeacons, when they do not support the paten, ought to conform themselves to the celebrant, whenever he bows his head, or makes the sign of the cross; but whether they ought to do this also when the celebrant makes the sign of the cross or bows his head, while uttering something aloud? Also: Are they obliged to strike their breasts together with the celebrant, at the words "Have mercy on us, sinners," at the "Agnus Dei," and finally at the words "Domine, non sum dignus"?

Doubt V. Whether a priest celebrating a solemn Mass, or a Mass with a sermon, can bless the person who preaches after the Gospel.

Doubt VI. Whether, when, after a Requiem Mass, no tomb is found, nor a bier carried, nor a cloth spread before the steps of the altar, the celebrant can stand on the Epistle side in the middle of the sanctuary, or on the ambo facing the Gospel side, as is customary with us, and there sprinkle [the altar] and recite the prayer?

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Doubt VII. Whether, whenever a Requiem Mass is sung for a specific person, even if it is not the third, seventh, or thirtieth day, nor strictly the anniversary, the unique prayer and the sequence "Dies Irae" must be recited?

Doubt VIII. Whether, in the Absolution, in the absence of the body, the celebrant should always be placed between the tomb and the altar, and the subdeacon between the church door and the tomb, whether the deceased was a priest or a layperson. Also: Whether, in the Absolution without ministers, in the absence of the body, the celebrant should go around sprinkling and incense the tomb?

Doubt IX. Whether the ancient custom of placing the cross at the head of the coffin or tomb should be maintained while the Mass and the Office for the Dead are being sung?

Doubt X. In various churches, even with inscriptions, according to the unforgettable custom, the organ is played throughout the Feria Mass on the Feast of the Lord's Supper. The question is asked: Can such a custom be maintained, which is not easily abandoned?

Doubt XI. Whether the custom of not lighting the third candle in private Masses from the Consecration to the Communion can be maintained, although it can be conveniently done? Also: Whether the altar cloths should extend all the way to the ground on the sides?

Doubt XII. To the question of whether, for washing the wine and water in the second purification after Communion, the priest should move from the middle of the altar towards the Epistle side, the Congregation of Rites responded on July 22, 1848, in Tornacensis: "The rubrics for the different types of Mass should be observed." Hence, some say that in all private Masses, one should not move from the middle of the altar to receive the ablutions; others, however, assert that one should move from the middle in ordinary private Masses, but not in Masses before the Most Holy Sacrament.

[*Latin ed. p. 740*]

740 QUESTION: At that time, it was customary; others, however, abandon this custom, leaving it to the priest according to the custom. What, therefore, is to be considered in such a variety of opinions? QUESTION XIII. Some teach that the entire corporal should not be unfolded from the beginning of Mass, but only the anterior part of it should be unfolded after the reading of the Offertory. Furthermore, the aforementioned anterior part of the corporal should be folded after the reception of the Blood in the First and Second Masses of the Nativity of the Lord, until the Offertory of the following Mass. Can such a practice be maintained? QUESTION XIV. Should the altar be marked with a sign in Masses celebrated before the Most Holy Sacrament, at the beginning of the Gospel of St. John? QUESTION XV. Can

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the veil with which the Cross is covered on Holy Saturday be of black color, or must it be entirely of violet color? QUESTION XVI. By Decree of the Congregation of Sacred Rites of July 28, 1876, it is disapproved that an assisting priest, wearing a surplice, should be present when a priest solemnly celebrates. Therefore, it is asked: Can an assisting priest wearing only a surplice be present in the first solemn Mass of a new priest? Can a priest, wearing only a surplice, assist in a private Mass? Can he also be present in the more solemn feasts, which are celebrated with pomp throughout the year? QUESTION XVII. Can small instruments made of salt be used in Baptism, with which the inner parts of the mouths of infants are touched, or should the Roman Ritual be followed, which requires that the salt be well broken and ground? QUESTION XVIII. Can the godparents at Baptism recite the Our Father and the Creed in the vernacular language, while the parish priest recites them in the Latin language? The Sacred Congregation of Rites, after careful consideration of the aforementioned questions, deemed it appropriate to respond as follows: Regarding I: The Ceremonial of Bishops, book I, chapter 18, paragraph 16, should be observed; and the celebrant should remain silent when receiving the offerings of the faithful. However, the custom of kissing the stole or the maniple may be maintained, except in Masses for the Dead. Regarding II: Consult the rubrics, decrees, and approved authors. Regarding III: The rubrics of the Missal and the Ceremonial of Bishops should be observed. Regarding IV: Regarding the first, no; regarding the second, only until the Agnus Dei. Regarding V: See the Decree of December 10, 1796. (1) (1) BRACHAREN. The Master of Ceremonies of the Church of the Blessed Virgin of Oliva, in the Diocese of Bracharen, having petitioned the Sacred Congregation, requested that the following questions be declared:

[*Latin ed. p. 741*]

APPENDIX VII. Ad VI. Negative. Ad VII. Let the Decree be given in Briocen, on the 12th of August, 1854, concerning points XI and XII. (1) 741 Ad VIII. Regarding points 1 and 2, the rubrics of the Missal and the Ceremonial of Bishops must be observed. Ad IX. The rubrics must be observed.

1. Whether, before the Most Holy Sacrament publicly exposed, the preacher ought to ask for a blessing in each sermon, from someone celebrating?

2. Whether, in those churches where it is customary for such a blessing to be requested from anyone celebrating, it ought to continue to be done even when the Sacrament is exposed, or not?

3. Whether the choir, while reciting the canonical hours before the Most Holy Sacrament, whether veiled or uncovered, in a prominent place, may sit and cover their head with a biretta, or whether they ought to stand with their head uncovered, as if without a veil?

4. Whether the first dignitary of the said collegiate church, who is not yet

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a priest, ought to minister to the priest celebrating, holding the candle and palm, or whether such actions, according to the dignity, ought to pertain to a priest, with the aforementioned first dignitary present in the choir?

5. Whether a canon, a priest, on the feast day of the Lord's Supper, during the general Communion, ought to wear the almuce hanging from his neck, or only over the cotta?

6. Whether, on the very Sunday of the Octave of Corpus Christi, or on other days designated during the year, on which the office of the double rite is recited, and it is customary to have a procession of the Most Holy Sacrament through the various parishes and churches of the city, as is certainly the case on the feast of Corpus Christi, which has a fixed and designated day with the attendance of the people of that parish, a Mass ought to be celebrated for a serious matter concerning the Most Holy Sacrament after the Non, or whether it ought to be said of the Sunday, or of the feast with the commemoration of the Most Holy Sacrament?

The Sacred Congregation, after carefully considering the opinion of one of the Masters of the Apostolic Ceremonies, and after that opinion had been published in print, responded to the Most Reverend and Most Reverend Cardinal Anthony of Auria, as follows: "To all, according to the opinion of the aforementioned Master of Ceremonies, whose book has been given to the Orators as a pious rule." The summary of his opinion is as follows:

Ad 1. "Affirmatively, if there is a custom in the Diocese of Brachiarense; otherwise, a blessing should be requested from the celebrant, provided that he is a bishop, according to the form prescribed in the Ceremonial of Bishops, book 1, chapter 22."

Ad 2. "As provided in the first point."

Ad 3. "The clergy may sit, even with their head covered with a biretta, but it would be commendable if they were to stand with their head uncovered."

Ad 4. "Affirmatively to the first part, negatively to the second."

Ad 5. "The custom of the place must be observed."

Ad 6. "The Mass of the day should be said of the Sunday, or of the feast occurring with the commemoration of the Most Holy Sacrament."

And so it was declared. On the 10th of September, 1796. (1) BRIOCEN.

Doubt XI. Whether the second prayer can always be changed, and in its place, a prayer for the dead can be said? The reason for the doubt is that the Decree of Aquensis states that sometimes, for that prayer, "God grants forgiveness," can another be substituted, e.g., for the Father and Mother?

Doubt XII. Whether, in daily or solemn Masses, whether with or without singing, the Sequence Dies Irae must always be said by the celebrant and

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sung by the choir? The reason for this is...

[*Latin ed. p. 742*]

742 APPENDIX VII. Concerning customs to be eliminated. Regarding XI. Concerning whether both customs should be observed. Regarding XII. Consult approved authors. Regarding XIII. Concerning point I, the rubric of the Missal and the Ceremonial of Bishops should be observed; concerning point 2, consult approved authors. Regarding XIV. It is permissible. Regarding XV. The rubric should be observed. Regarding XVI. A decree was issued in Matelica on March 11, 1837. (1) Regarding XVII. The Ritual should be observed. Regarding XVIII. It is permissible. And thus, he wrote, declared, and ordered it to be observed. On December 30, 1881. CONCERNING SEYNA. The Most Reverend Lord Peter Wierzhowski, the current Bishop of Sayn, humbly requested a declaration from the Sacred Congregation of Rites regarding the following doubt: On Palm Sunday, according to the rubric of the Missal, in Masses celebrated privately without the blessing of the palms, the last Gospel should be read: "And when he approached to Bascama, he slew Jonathan and his sons there." However, in those Masses which are celebrated immediately after the aforementioned blessing by the same celebrant, it should be: "The same was in the beginning with God." Therefore, the question arises: Which Gospel should the priest read? It is doubtful, because the Missal prescribes the Sequence "Dies Irae" at the discretion of the priest? And, inasmuch as the Reverend Bishops of Briocen and Trecoren request a dispensation for the singing of the Sequence "Dies Irae" due to a lack of time and a lack of singers, especially in rural churches. Regarding 11. "Only one prayer should be said in the Mass for the Dead with singing for the soul of the person designated, while offering alms." Regarding 12. "The Sequence 'Dies Irae' should always be sung in Masses for the Dead which are sung with only one prayer; however, some stanzas of that Sequence may be omitted by the singers." On August 12, 1884. (1) MATELICA. Aloisius Carbonari, priest of the Congregation of the Oratory in Matelica, proposed the following doubt to the Sacred Congregation of Rites for a suitable solution: 1. Can a godfather or assisting priest, when a priest celebrates solemnly for the first time, sprinkle the people with holy water on Sundays, and then proceed to the sacristy, and lead the priest himself to the altar with the ministers? 2. Can the godfather himself wear the stole under the cope, and minister to the faithful with the paten whenever the Holy Eucharist is to be distributed? 3. Should the godfather incense the celebrant, or at least can he do so in place of the deacon? And the Sacred Congregation itself, convened today in its ordinary meeting, with me as Secretary, responded as follows: Regarding I. "No, in all cases." Regarding II. "It is to be considered whether a deacon is present." Regarding III. "No."

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On March 11, 1837.

[*Latin ed. p. 743*]

743. Whether it is permissible for a Priest, before the Most Holy Sacrament solemnly exposed for the devotion of the Most Sacred Heart of Jesus in the Church, to publicly recite acts or other prayers in honor of the same Most Sacred Heart in the vernacular language, so that the faithful people present may hear them, and so that he himself may be able to respond to these prayers or acts?

III. Whether it is generally permissible for a choir of musicians (that is, singers) to chant hymns in the vernacular language before the Most Holy Sacrament solemnly exposed?

The Sacred Congregation of Rites, with the reference of the undersigned Secretary, having considered a request from one of the Masters of the Ceremonies of the Apostolic Chamber, and having heard the Reverend Assessor of the same Congregation, and after deliberation on the questions proposed, has decided as follows:

To I: Affirmative, as regards prayers only.

To II: Affirmative, or with the provision in the preceding.

To III: It is possible, provided that it is not a question of hymns such as the *Te Deum*, and other liturgical prayers, which must be chanted only in the Latin language.

And thus it was declared and written.

February 27, 1882.

APPENDIX VII.

III. When a Mass is celebrated, with a Bishop concelebrating, who performs the said function according to the *Caeremoniale Episcoporum*?

The Sacred Congregation of Rites, with the reference of the undersigned Secretary, responded as follows:

In this case, the Gospel according to John, "The same was in the beginning with God," should be read.

And thus it responded, and wrote.

January 16, 1882.

LEAVENWORTHIEN.

Desiring to render the devotion to the Most Sacred Heart of Jesus, as regards external cult, uniform and strictly in accordance with the liturgical laws, within the Diocese entrusted to him, the Most Reverend Lord Ludovicus Maria Finch, Bishop of Leavenworth, humbly requested a declaration on the following questions from the Sacred Congregation of Rites:

I. Whether it is permissible for a Priest celebrating to publicly recite

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prayers or hymns in the vernacular language, for example, Novenas to the Most Blessed Virgin, or to some Saint, before the Most Holy Sacrament publicly exposed?

[*Latin ed. p. 744*]

744 SUMMARY OF THE ACTS CONTAINED IN THIS VOLUME XXI. -S=fc$r LETTERS AND ACTS OF THE ROMAN PONTIFF. Letters of His Holiness Pope Leo XIII to the Bishops of Ireland; in which he laments the new stirrings of spirits, as they are contrary to the profession of the Christian name. . . p. 3 His Holiness Pope Leo XIII, by his own decree, established one hundred thousand Italian silver coins for the Belgian College in Rome, so that seven young men may be supported there perpetually. . . . » 6 Letters in the form of a Brief from His Holiness Pope Leo XIII, by which it is ordered that a medal be struck, having the form of a cross, in memory of the fiftieth anniversary of his priesthood. . . » 65 Encyclical Letter of His Holiness Pope Leo XIII to the Patriarch and the clergy of the Armenian rite. . . » 67 By his own decree, His Holiness Pope Leo XIII established new laws for the organization of the Vatican Library and the offices of those who preside over or serve it. » 193 Letters of His Holiness Pope Leo XIII to His Eminence Cardinal Lavigerie, in which he assigns funds amounting to three hundred thousand [units of currency] to be used for the abolition of the servitude of Africans. » 195 Letters of His Holiness Pope Leo XIII to the Bishops of England, in which he congratulates them on their unanimous agreement in condemning the laws passed by the Italian government against the clergy. » 257 Letter of His Holiness Pope Leo XIII to the Archbishops and Bishops of America; in which he commends the Italian citizens who are migrating there. » 258 Letter of His Holiness Pope Leo XIII to the Archbishop of Tours, in which certain authors of periodicals are admonished regarding the due respect owed to Bishops, as pastors of the flock of the faithful. » 321 Letter of His Holiness Pope Leo XIII to all the Bishops and faithful of the Catholic Church, on the occasion of the approaching end of the year marking the fiftieth anniversary of his birth into the priesthood. » 323 Letters of His Holiness Pope Leo XIII to the President of the Republic of Ecuador, in which he congratulates him on his concern for the Catholic religion. » 449 Constitution of His Holiness Pope Leo XIII concerning the Great Lyceum of Quebec. » 513 Letter of His Holiness Pope Leo XIII concerning the Great Catholic Lyceum of the United States of America, established in the city of Washington. » 517 Letters of His Holiness Pope Leo XIII to the Bishop of Brescia. » 520

[*Latin ed. p. 745*]

SUMMARY OF ACTS: Letters of His Holiness Pope Leo XIII to the Bishop of Gremona; concerning the case in which he submitted himself to the judgment of the Church regarding the condemnation of a certain

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work published by him. » 577 Agreements concluded between the Holy See and the Republic of Colombia. » 7 Allocution of His Holiness Pope Leo XIII in the Consistory on June 30, 1889, in which he laments the condition in which the Roman Pontiff finds himself with regard to his freedom and dignity. » 705 Letters of His Holiness Pope Leo XIII to the Archbishop of Milan concerning a decree condemning forty propositions drawn from the posthumous work of Ant. Rosmini. » 709 HOLY CONGREGATION OF THE COUNCIL: Concerning the Gallipoli diocese; the question is raised whether the habitual care of souls pertains to the Cathedral Chapter. » 13 Regarding patronage, rights, and pensions; among the patrons who have sold the right of patronage over a prebend, with the care of souls, and the Bishop, who already possesses a third voice by donation, the question is raised as to whether and in whose favor the right of patronage is established. » 24 Regarding the rights and emoluments of the parish; it is inquired whether the habitual care of souls is still with the Chapter, and whether certain emoluments for funerals are due to the Chapter, in which the Chapter participates collegially. » 72 Regarding sacraments and funerals; it is decided that the parish priest of the Cathedral does not have the right to administer sacraments and perform funerals for rural residents who die in another parish of the city, without a designated burial place. » 94 Regarding processions and funerals; it is stated that the common law must be observed regarding the holding of ordinary and extraordinary processions. » 106 Regarding a mortgage guarantee; it is granted to the patron that he may subject certain ecclesiastical goods to a mortgage guarantee. » 125 Regarding the commutation of vows; it is granted to the parish priest that he may, for five years, apply the revenues of two legacies to the maintenance of Masses for the feast days of the Most Holy Rosary and the conventual Mass. » 127 Regarding customs; it is tolerated that the custom of assigning a portion of the alms collected for the benefit of the dead to the sacred orator is maintained; and also that an offering of one book be demanded for the distribution of sacred oils. » 129 Regarding parochial rights; the resolution concerning the question of parochial rights between the Chapter and the Parish Priest, previously stated, is confirmed again. » 137 Regarding the residence and parochial burdens; it is granted to the canon.

[*Latin ed. p. 746*]

746 SUMMA ACTORUM: An absolution concerning the omission of conventual Masses is granted, and a dispensation from residence and service in the choir is permitted for a time. » 148 Apamien. and Victorien. Masses for the people; it is resolved that parish priests are not obligated to offer a Mass for the people on June 25th, if the feast of St. John the Baptist is transferred to that day. » 144 Montispolitian: Regarding points of law; it is resolved that the entire sum, substituted for the common Mass, should be established for

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daily distributions; and the custom of dividing alms equally between the diligent and the negligent is rejected. » 153 Nivernen: Concerning unions; the faculty of uniting [parishes] is denied, if the requirements of the law are lacking. » 159 Ventimilien: Concerning marriage; the response was that the marriage is considered null, perhaps due to a lack of sufficient discretion in the woman. » 162 Squillacen: Concerning the erection of a parish; it is granted that a new parish may be erected, subject to certain conditions. . . . » 182 Agrigento: Concerning alienation [of property]; the sale of goods for a pious cause is validated, provided a certain sum of money is paid to the Church. » 186 Fodiana: Concerning a dispensation from the Mass for the people; the parish priest is dispensed from offering a Mass for the people on suppressed feast days, until the parish is otherwise provided for. » 189 Melevitana: Concerning disputes; the matter concerns which of two clerics, both of whom were named to a benefice by error, should be admitted to possession of it. » 197 Apuana: Concerning funerals; the question is raised between the parish priest, within whose parish boundaries a hospital was built, and the Prefect of the Cathedral, regarding the right to bury the dead within the same hospital. . . . » 201 Firmaiia: Concerning alienation; it is left to the judgment and conscience of the Ordinary to grant the requested dispensation for alienation by certain benefactors. » 209 Mantua: Concerning privileges or rights; although the Prebend of the Primicerius has passed through various phases over time, it is resolved that it always retains the rights of the Primicerius, according to ancient honor. » 213 Viltien: Concerning the nullity of marriage; it is decided that the marriage is not considered null, due to a lack of proof of coercion inflicted upon the woman. » 226 Regien: Concerning the service of the choir; a reduction in the service of the choir is granted, for reasons known to those involved. » 236 Annecien: Concerning decrees regarding First Communion; the decrees of the Ordinary regarding the time at which boys and girls are admitted to First Communion are confirmed; against which decrees the parish priest had appealed. . . . . » 239 Calatayeronen: Concerning marriage; it is resolved that the marriage is considered null due to an impediment of affinity arising from an illicit union. » 261

[*Latin ed. p. 747*]

SUMMARY OF THE ACTS OF THE CHAPTER OF Civita Castellana, held in the year 747, concerning the reduction of burdens; concerning capitular matters; a dispute arises as to whether the election of a canon, holding an honorary office, is valid, having been made after the president of the chapter had declared the chapter assembly dissolved, with expressions of gratitude being offered.

288 A legate for the reduction of Masses is granted, under the express condition that this legate be perpetual, although in its institution, absolute perpetuity had not been explicitly commanded.

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356 In Civita Castellana, concerning the sacristy at Lünen, and at Sarzanen, doubts arise concerning the ordination of religious; three resolutions are made; a chaplain who refuses to pay is condemned to pay the tax for the use of the cathedral sacristy.

299 In Albanen, concerning the service of the choir; the resolution previously given concerning the turn of service in the choir is confirmed.

307 In Urbevetana, concerning a chaplaincy; the faculty to grant a legate to the table of benefices is denied.

313 In Ästen, concerning absolution, reduction of burdens, and commutation: the grace of absolution is granted, concerning the past; reduction of burdens, concerning the future; and commutation, under certain conditions.

335 In Patavina, concerning absolution and the remission of Masses; the requested grace is granted.

337 In Concor dien, concerning the right of nomination or convention; the chapter of the cathedral is restored to the exercise of the right of nomination and presentation to all benefices, except for the dignity of dean, which are vacant in months not reserved.

339 In Engolismen, concerning the faculty of remitting and reducing burdens; the Apostolic See grants to the Bishop for a period of five years, the faculty of remitting and reducing the burdens of his diocese.

352 Doubts concerning the ordination of religious, to be performed by a foreign bishop, are resolved.

359 In Ventimilien, concerning the translation of a chaplaincy and of burdens; the grace of transferring the chaplaincy with its rights and burdens to the parish church is granted.

365 In Firmana, concerning parochial rights; in order to put an end to long-standing disputes, and to promote the spiritual good of the faithful, all parochial rights are granted to two filial curacies, with a quota of the tithes of the respective territory, to be distributed from the mother church and determined by the prudent judgment of the Archbishop, for the proper support of each.

400 In Seccovien, or of the Order of St. Benedict, concerning union; it is granted that the parish be united to the abbey in full right, that is, concerning office and benefice.

422 In Aquen, concerning liberation; the requested liberation is granted under certain conditions.

426 In Catacen, concerning patronage; the institution in a benefice is denied, even though the one requesting the institution should demonstrate

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that he is worthy.

[*Latin ed. p. 748*]

SUMMA A C TO RUM 748: A dispensation is requested, both from the maternal side and, in the case of a single application for a Mass, from the paternal side, to be joined with a certain person, etc.

582: Regarding the benefit of an instructor.

423: Neapolitan marriage: This concerns the nullity of a marriage due to the husband's impotence.

452: Mechlin marriages: It is resolved that a dispensation for a marriage that has been contracted but not consummated should be granted.

472: Ferentino marriage: It is resolved that the marriage is null, because, according to the judgment of physicians, the wife is more of a man than a woman, and is therefore unfit for intercourse and procreation.

480: Neapolitan marriage: A dispensation is granted from a marriage that has been contracted but not consummated.

521: Regien, concerning patronage and pensions: It is decided to depart from the decisions made in another court; it is determined to whom the patronage belongs, and the pension is increased to the sum of 2000 florins.

535: Tudertina, concerning alms for a second Mass: The faculty to offer is granted, but alms for a second Mass are denied.

547: Legionen, concerning a dispensation from an irregularity: Regarding a certain irregularity of the arm and hand, it is responded to the petitioner that a dispensation should not be granted.

578: Cusenlina, concerning absolution: The grace of absolution is granted, with regard to the past, to the parish priest, who is obligated to provide a dowry.

581: Divionen, concerning double parishes: The parish priest of a double parish.

585: Aquen or Massilien, concerning marriage: It is resolved that there is no case of abduction, and a process is ordered concerning clandestine marriage.

593: Ariminen, concerning absolution, reduction of burdens, and transactions.

620: Limburgen, concerning doubts about clandestine marriages: It is doubted whether the decree Tametsi obliges the faithful of Frankfurt, either by force of publication or by force of long-standing observance.

648: Conimbricen, concerning the schools of the University: Doubts arise concerning the functions that may belong to the civil State regarding Universities, which do not immediately fall under the protection and reform of the Holy See.

674: Barcinonen, concerning the change of will: It is granted to change

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the will of the testator according to the opinion of the Bishop.

711: Mandelen, concerning the fourth anniversary of the funeral: It is determined to whom certain wax relics belong in the funeral of a deceased parish priest.

715: Feretrana, concerning the dismemberment and erection of a parish: A dismemberment that had been repeatedly requested is granted, since just causes are present.

721: Baionen, concerning a diocesan synod: For the sake of granting an indulgence, it is granted to the Bishop.

[*Latin ed. p. 749*]

SUMMARY OF ACTS: It is possible to indicate a diocesan synod during a decade, by convening not all the parish priests together. 726 Coelsonen. Doubts concerning distributions with regard to canons who are absent from the choir for more than three months without cause. 730 749 San Severo; concerning the Gregorian chant of the Mass. 254 An indulgence of two hundred days is granted to those who recite the annexed prayer, taken from the encyclical letters of the Most Holy Pope Leo XIII, which begin with the words "At the close of the year," dated December 25. S. CONGREG. EPISCOP. AND REG. Privileges of Venice; it is asked whether, how, and which persons, residing within the walls of the priory of the Order of Jerusalem, are exempt from the jurisdiction of the parish. 52 Letters from the Eminent Prefect to the Ordinary of Bordeaux concerning the administration of Holy Communion by religious families. 505 Regulations concerning pensions in benefices held by curates; it is considered whether the episcopal decrees which imposed pensions on benefices held by curates should be confirmed. 550 S. CONGREG. OF INDULGENCES. Decree, by which to the members of the Third Order of St. Francis of Assisi, the faculty is granted to receive Absolution or Benediction even on the day preceding those festivals to which it is attached. 60 Sebenico concerning indulgences attached to the recitation of the small office of the B. Virgin Mary. 191 Doubts concerning the prescribed work of prayer for the intention of the Supreme Pontiff for obtaining indulgences. 192 December 1888. 559 Rescript by which an indulgence of one hundred days is granted for prayer to implore the preservation of chastity, to ecclesiastical persons, established in the sacred Orders. 697 S. CONGREGATION FOR RITES. Decree by which the feast of the Most Holy Rosary is enriched with a proper office with Mass. 61 Decree by which a plenary indulgence is granted to the faithful who gather on the 31st day of the next month of December to offer prayers of thanksgiving to the Most Holy Heart of Jesus, etc. 253 Decree of beatification or declaration of martyrdom of the venerable servant of God, Peter Aloysius Mary Chanel, priest of the Society of Mary, apostolic provicar of Western Oceania. 318 Formula for blessing and bestowing the scapular of the B. Virgin Mary of Mount Carmel. 433 Decree of beatification or dec-

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laration of martyrdom of the venerable servant of God, Gabriel Perboyre, priest of the Congregation of the Mission of St. Vincent de Paul. 520

[*Latin ed. p. 750*]

SUMMARY OF ACTS 750, Roman or Parisian. Concerning the decree for the beatification and canonization of the venerable Servant of God, Magdalene Sophia Barat, foundress of the Society of Sisters of the Sacred Heart of Jesus. 692 Annecy. Decree concerning the confirmation of the cult rendered from time immemorial to the Servant of God, Germanus, abbot of the Order of Saint Benedict, now called a saint. 693 Decree by which the feast of the Most Sacred Heart of Jesus is raised to the rite of the double first class. 694 Decree concerning the beatification or declaration of martyrdom of Peter Aloysius Mary Chanel, priest of the Society of Mary, Pro-Vicar Apostolic of Western Oceania. . . 736 SACRED PENITENTIARY APPOSTOLIC. Decree by which several books are prohibited. 698 FROM THE ACTS OF CONSISTORY. Concerning the Consistory held on February 11, 1889. 385 Concerning the Consistory held on May 24, 1889. 641 FROM THE HOLY CONGREGATION OF THE HOLY ROMAN CHURCH, INQUISITION. A doubt concerning the faculty of dispensing over public impediments to marriage in the danger of death. 696 Letters, by which it is commanded to the Bishops that they transmit to their successors portions of the Most Holy Wood of the Cross; which are carried enclosed in containers, suspended before them on their breast. 696 APPENDICES. Response of the Sacred Penitentiary concerning the singing of the Ambrosian hymn. 64 HOLY CONGREGATION OF THE INDEX. Decree by which several books are prohibited. 368 Decree by which the pamphlet — "Roma e P Italia, e la realtà delle cose" — is prohibited. 561 Appendix I; in which more decrees of the Holy Congregation of Rites are mentioned. 369 Appendix II, the same. 435 Appendix III, the same. 506 Appendix IV, the same. 562 Appendix V, the same. 622 Appendix VI, the same. 700 Appendix VII, the same. 738

[*Latin ed. p. 751*]

7 51 GENERAL INDEX OF CONCLUSIONS NOTED IN MOST OF THE ACTS CONTAINED IN THIS VOLUME, THE SUBJECT MATTER OF WHICH IS AMPLY EXPLAINED OR STATED IN EACH ACT. These conclusions are contained under the following terms: Benefice concerning union; Canonically Collegiate Church; Confession; Decimals; Bishop; Patronage; Tithes; Marriage; Mass concerning application; Mass concerning bination; Offerings of the faithful; Order of Jerusalem concerning exemption; Parish Priest; Benefice concerning union. Although unions of benefices or pious foundations are generally considered objectionable in law, because the status of the same benefices is altered, the dispositions of the founders are subverted, and sacred patrimonies are diminished, nevertheless, if necessity or evident utility is present, the Apostolic See is

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wont to grant permission for such unions to be made. page 426. Canon. A canon is bound under a grave obligation to attend the choir, and to fulfill other canonical duties, notwithstanding the holding of revenues; which can only be the cause for the service of the choir, by pontifical indult, to be diminished, but by no means abolished, page 148. The civil suppression of ecclesiastical entities does not excuse canons from fulfilling their own proper duties; because in canonical jurisprudence, civil suppression is considered as a true spoliation of the Church, and not at all as the extinction of titles or a collegiate body, page 149. The addition of poverty, and advanced age of the orator, gave cause for a benevolent remission and absolution to be granted, as well as a temporary dispensation from residence. Ibid. Honorary canons, who in these times are established in many chapters for the sake of divine worship and to adorn the Bishop's senate, can be chosen by the Bishop with the consent of the Chapter, or by the Chapter with the consent of the Bishop, p. 298. Regarding the election of such canons, no specific form is prescribed by the universal law of the Church; so that if there is no determined form or special custom in the diocesan synod or in the chapter statutes, then—

[*Latin ed. p. 752*]

INDEX GENERALIS 752: The form that can be used, and the legitimate cause that withdraws the certain will of the assembled, are those which, by following the established order, supplement and allow the assembly to legitimately deliberate and decide, ibid. Any canonical titular [official] is deprived of his place by the president, ibid.; he can propose questions and make demands to the collegiate church, ibid. Doctors [scholars] believe, and it is accepted in practice, that only those matters are to be treated in the Chapters which have been arranged; unless it is desired that those matters also be treated which, through their very nature and use, have become so, even through a long period of time, through the death of canons, or through another cause, they nevertheless remain so. page 225. Even though it is ordinarily the custom for the Chapter to be assembled by the president, nevertheless it can also be assembled by those whose interests are involved, even if one alone makes an instance to bring up some matter that is not trivial. ibid. In canonical jurisprudence, civil suppression is considered a violation, by which no rights or privileges of a collegiate church are in any way extinguished, ibid. While colleges and churches, all their ordinary rights and privileges are lost if they are established by legitimate authority, yet they are anomalies; not those things which are subjected to the will of any, nor those which are rightly proposed, either in substance or in form; otherwise, the president's power would be for destruction, not for the purpose of preservation, page 299. A canonical and legitimate proposal is one that is clear in its subject matter; and the president has acted less reasonably in opposing the petition of so many brothers, to the extent that

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the begun business would be abandoned and other assemblies would be postponed at his own discretion. ibid.

Assemblies of the Chapter can be reasonably dissolved by the president when the matters to be treated have been properly completed, so that if things are in disorder and are not completed, the...

Decimals.

The collection of decimas [tithes] or other emoluments of the parish...

[*Latin ed. p. 753*]

753 This method of acting is in conformity with the disposition of Trent, which, in the cited chapter 3, session 21, wished to preserve the customs of those churches in which those who do not reside, or who do not serve, receive nothing, or less than a third part [of the income], ibid. The Council of Trent constantly maintained that it is an abuse that must be completely eliminated, that distributions are indiscriminately made among the clergy, whether they actively participate in the choir or not, ibid. Therefore, no attention whatsoever should be paid to contrary customs, or even to constitutions that establish such a division; indeed, since they are abhorrent to the prescription of the Council of Trent, they must be uprooted. ibid. In the general index, "Index Generalis," the term "distributiones" is considered a certain sign of jurisdiction, page 23. According to the Council of Trent, chapter 3, session 21, concerning the support of churches, both cathedral and collegiate, in which there are no daily distributions, or they are so meager that they are practically neglected, one-third of the fruits and all revenues and offerings, both of benefices and canonries, etc., must be separated and converted into daily distributions, page 158. These distributions, among those holding benefices and others who are engaged in divine matters, must be proportionately divided according to the division made by the Bishop, even as the delegate of the Holy See, in the diocese, with the first deduction of the fruits, page 159. Where parishes are not distinct, the entire care of souls belongs to the Bishop, who is called the "parochus," page 23. Bishops can enact laws and decrees, but they cannot acquire dominion over them, and those exemptions, privileges granted by the Holy See to religious orders, must be applied at the discretion of the Ordinary, page 59. Nevertheless, a different opinion is to be held, as stated in the cited Council of Trent, chapter 3, session 22, and chapter 12, session 24, concerning laws and decrees that relate to the care of souls, the administration of the sacraments, and all matters pertaining to them, which in no way harm the exemption of religious orders, ibid. Bishops, above all, represent a faithful servant, a head of a family, to whom the care of souls has been entrusted, ibid. Acts, Volume XX, column 1.

[*Latin ed. p. 754*]

INDEX GENERALIS 754: The manner and benefits for the people of hav-

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ing the Body of Christ; while promoting this, it is considered by Benedict XIV to be a matter of the utmost importance to have the care of the flock, and to provide means by which the sheep may more safely and easily be led to the pastures of eternal salvation in their appointed time. See page 251. It is a common axiom that Bishops in their dioceses can, with several distinct lines, grant what the Supreme Pontiff can grant or transfer in the entire world, except for those specially reserved, page 252. Therefore, it is not unreasonable to see that they can also establish institutions that contribute to the Christian education of children; since these are encouraged and established by sacred canons, they have the most important role in Christian education, ibid. When an institution establishes a single right, and designates a single line, or family, or succession, it represents all the patrons in solidum, and the right to increase exists when one is lacking, ibid. It is certain that a patron cannot validly transfer the patronage of the gentile flock to another, to the detriment of those who were contemplated by the founder and still exist; but this can be done with the consent of those who approve this transfer or donation, ibid. A donation and transfer in this matter, for a time, with the favor of the Bishop, provided with all the points of legality; for the founder himself made the donation of his own right; this donation was sanctioned by apostolic authority and, by constant practice, from the earliest times to the present day, has been repeatedly confirmed, ibid.

[*Latin ed. p. 755*]

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G. Patronage: The right of patronage, by sanction of sacred canons, cannot be sold; therefore, patrons who act otherwise are subject to the penalties of excommunication and interdict, and are deprived of the right of patronage itself, ibid. The right of patronage is nothing other than a grace or privilege granted by the supreme authority to founders of benefices, and to other persons who have done good to the Church. page 351. It is certainly the prerogative of the supreme teaching authority of the Church to provide for offices and benefices; therefore, unless for a special reason of benevolence, private individuals are permitted to nominate or present candidates for benefices, ibid. Although the right of patronage is contained within the body of the law, it does not cease to be such, even though it is most certainly conferred based on certain reasons, ibid. The Roman Pontiffs can revoke such privileges or graces, and this revocation will certainly take immediate effect, ibid. Through concordats, these privileges are revoked and suspended whenever the provision of benefices by private patrons is transferred to the Prince, Bishop, or Holy See, page 352. Matriculation: Matriculation, as defined by Cardinal De Luca, which is often granted to a major church, and to the cathedral itself, is an improper and merely honorary term, and does not signify any precise mark of jurisdiction or preeminence,

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page 124. The privilege of cathedral status indeed implies the primacy of honor and the dignity of preeminence, but it is not valid for imposing the yoke of servitude upon other churches, ibid. Marriage: According to the Benedictine Constitution, *Dei Miseratione defensor vinculi* (the defender of the bond) must be cited in any judicial act: it is necessary that he be present at the examination of witnesses, both in person and in writing, to protect the validity of the marriage; and whatever is done in court without him being legitimately cited or notified is null, void, and of no effect, page 179. And, according to the instruction of the Sacred Congregation of the Council of August 22, 1840, absent parties, at the request of one party or even without its consent, are to be examined by the Bishop of the diocese in which they reside, according to a questionnaire prepared by the Defender of the Bond, and this questionnaire is to be transmitted, sealed and signed, to another suitable person appointed by the same Bishop, who will fulfill the requirements prescribed by Benedict XIV, and who will participate in the examination of the validity of the marriage, ibid. The Defender of the Bond, by virtue of his office, delivers the sealed and signed questionnaire to the Chancellor or Notary to be opened, if requested by the judge, according to the decree of the judge in the act of examination, ibid.

[*Latin ed. p. 756*]

756 GENERAL INDEX, concerning those who are to be questioned, both the spouse insisting on the nullity of the marriage, as well as others to be examined regarding the law, page 180. After the examination is completed, the plaintiff and the witnesses must subscribe and give an oath, whereby they must confirm that they have spoken the truth, ibid. The spouses themselves must be summoned by the Defender of the Bond, so that they may indicate seven who are related to them by blood or affinity, and if these seven are lacking, then neighbors, ibid. And, if the matter concerns a dispensation from marriage, then inquiries must be instituted both concerning the lack of consummation of the marriage, as well as concerning the causes for the dispensation, ibid. At times, the Most Holy Prince has granted permission that extrajudicial information be admitted, for the purpose of proving the lack of consummation, ibid. In marriage contracts, two things are necessarily required, namely, knowledge, or the use of reason, by which one understands what one is doing, and the proper age, namely, the age of puberty, and this begins in males after the age of 14, and in females after the age of 12, unless malice, or the shrewdness of nature, makes up for the age, ibid. The law presumes sufficient reason in those who have reached the age of puberty, and a valid marriage contracted in that age, except in the case where those are found to be incapable of contracting marriage, because in this matter, the truth must always be considered, not the presumption or prescription of the law, ibid. A strong presumption is given, by public and common opinion, concerning the lack of consummation, both

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immediately after the marriage among all the household members, as well as successively throughout the entire town or city. A marriage contract, because of the indissolubility of the bond, requires such consent, which is more complete than that by which other agreements and contracts are established, ibid. Free consent is lacking, not only where fear or coercion intervenes, but also from a lack of full development of reason, page 181. Tears, aversion, and lamentation of women, concerning marriage, whether for contracting or for having contracted, are signs of dissent, ibid. The impediment, which, because of affinity contracted through fornication, invalidates a subsequent marriage, is restricted to those who are joined in the first and second degrees of affinity, from Session 24 on Reforms of Marriage, chapter 4, ibid. To invalidate a marriage, the impediment of affinity arising from a union is not sufficient by the confession of both spouses, but it is necessarily required, either that it was public and notorious, or that it is confirmed by suitable witnesses, who provide reasonable and trustworthy evidence, ibid. Full demonstration through witnesses of the impediment of affinity is difficult, because it is not kisses or touches that create affinity, but rather...

[*Latin ed. p. 757*]

INDEX (The perfect carnal copula [sexual act] arises; which cause, hidden by the veil of modesty, usually remains concealed, ibid. The mere demonstration of illicit copula through indications does not suffice, because it excites suspicion but does not provide certainty. True moral certainty is obtained when the spontaneous confession of the guilty party most closely agrees with the indications, especially if they confirm their statement under oath, ibid. When contentious jurisdiction is exercised by a delegated judge, who possesses the same authority as the delegating judge, he cannot invalidate a judgment rendered by the delegate, whether he has performed his office well or poorly. p. 235. A final judgment, once rendered, cannot be revoked by the same judge; and therefore, since the authority of the delegating judge and the delegate is one and the same, neither of the two is permitted to revoke the judgment rendered: this jurisdiction belongs only to the superior tribunal, ibid. Marriage cannot exist without consent, and consent cannot exist without freedom, ibid. To infringe upon freedom, it is not always necessary to employ open force and great fear; but sometimes prayers and violent persuasions may suffice to deflect the mind: because in marriage, greater freedom is required than in other contracts, ibid. No marriage can be validated by a subsequent copula and cohabitation if it was originally impeded by a public impediment; but, according to the Council of Trent, it must be contracted again before the parish priest and witnesses, ibid. In the process of confirming a marriage, in which the existence of an impediment and fear are being investigated, witnesses must be examined regarding the nature and character of the

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parents of the party to whom the fear is said to have been instilled, p. 286. Also, regarding the moral qualities of that same party, namely, whether they are timid, or whether they are able to resist the command of any parent, ibid. Furthermore, the causes must be investigated that led the parents to instill the alleged fear. ibid. The clerk must transcribe verbatim, both the questions of the defender of the marriage and of the judge, as well as the complete answers of the witnesses, ibid. And to the Holy Congregation, not a synopsis of the process completed in the court, but a complete copy must be sent, ibid. Marriage cannot be entered into by coerced consent, because, as St. Thomas states in the Supplement, question 47, article 3, it signifies the union of Christ with the Church, which takes place according to the freedom of love, ibid. Indeed, any voluntary act is not sufficient for its validity, but a completely voluntary act is required, because it must be perpetual, p. 287. This perpetuity is taken away by coercion and fear, which fall upon a constant man. ibid.

[*Latin ed. p. 758*]

758 INDEX GENERALIS: An illicit union creates an affinity, which, according to the Council of Trent, Session 24, chapter 4, invalidates marriage up to the second degree inclusive, ibid. It often happens that the opposition of affinity, especially arising from an illicit union, intended to invalidate a marriage, stems from envy or malice; therefore, it is not easily possible to give credence to a single accuser, even if rumors about the matter prevail in the vicinity, ibid. Nevertheless, it is not necessary, in these cases, to demonstrate the union through direct evidence, and for witnesses to testify under oath, except for those of mature age, because this concerns a matter difficult to prove, and witnesses are not often called upon, ibid. Generally, it is accepted that such a union can be proven not only through presumptions and conjectures, but also through the testimony of witnesses, provided they are of a certain age, ibid. And such presumptions and the testimonies of witnesses must be joined together for this purpose, according to the common saying: "Individual things that do not suffice, when united, are helpful," ibid. It can be further proven through individual witnesses, but through a type of testimony that is supportive or cumulative, or through witnesses who, as Schmalzgrueber states in *Iure Eccl. Univers*, part 9, title 20, n. 105, testify about different acts, but which tend to the same end, and which assist each other.

"It is not necessary to resort to the way of grace, or to consult the Most Holy [Father] for a dispensation from a marriage that is valid and not consummated, whenever the path of justice is open, or when there is hope of demonstrating the nullity of the marriage; for it would be a futile dispensation from a bond that never existed, ibid. Marriage is null and void due to a deficiency in the subject on the part of the woman: and both spouses are freed from the law of the other, as if one of the spouses had died, page 501.

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Since the purpose of this contract is the right to the mutual exchange of bodies in order to achieve union, whereby two become one flesh; therefore, the difference in sex is a necessary element in marriage, although union is not necessary, ibid. But union and sex are considered differently in marriage; for union constitutes the object that the spouses promise and to which they grant a right over each other's bodies, while sex refers to the subject that the spouses give to each other in order to exercise the right of union, as far as they wish, ibid. From this difference arises the fact that a marriage can already exist without union, as happens in the case of impotence, because only the object is lacking, but not the necessary element of marriage; but no marriage would exist if the difference in sex ceased, as happens in the case of a hermaphrodite, from..."

[*Latin ed. p. 759*]

INDEX (GENERALIS 759)

Concerning the subsequent preeminence of one party; the reason is that marriage cannot stand if the necessary material is lacking, or if the woman, not being in a safe and free condition, does not subject herself to the man; ibid. Hence, it follows that even if the woman has consented, it is not valid, ibid. From the new law of Trent, the sterile and hermaphrodites validly and licitly contract marriage, having chosen and determined the sex, even though both are frustrated in the end in which the woman consents, which is the primary end of marriage; while the second end is lacking. Therefore, those who are such cannot procreate or be procreated, and the sterile are equal in this regard, as commonly taught by physicians. ibid. Regularly, matrons of good standing are chosen to be taken in marriage; except in the case where greater expertise is desired than is found in women; then the physicians must be consulted, lest the faculty of proof perish, or a valid marriage be dissolved or annulled, or the marriage be approved, page 502.

The questioning of the parties and witnesses must be done, and the depositions of each must remain secret before the publication of the process, in order to avoid subornation; Instruction of the Sacred Congregation, page 619.

In some places, there are no impediments to marriages between Catholics, unless they have been begun before a parish priest and two witnesses, page 672.

This law of Trent does not bind in the celebration of marriages, unless both parties are addicted to the Catholic religion; therefore, mixed marriages or those contracted between those who are not subject to the laws of such a kind do not subsist; because the Council decreed concerning these

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marriages.

[*Latin ed. p. 760*]

760 The GENERAL INDEX does not extend; Benedict XIV, in the Constitution *Singulari nobis*, and in *De Synodo Dioec.*, book IV, chapter 6, paragraph 12. In that matter, in order to prove the existence of a certain marriage, it must be shown that the aforementioned decree, whether it was published in explicit and clear terms, or through long-standing observance among Catholics as a decree of Trent, is valid; and that, if it was observed at one time, it did not subsequently fall into disuse. Ibid. After the declaration of the Sacred Congregation, confirmed by Urban VIII from *De Synod. Dioec.*, book 12, chapter 5, paragraphs 5 and following, it is certain that any promulgation of the chapter *Tametsi* which is not made as a promulgated law by the Council of Trent is null and void. Ibid. From the well-known teaching of canonists and from the resolutions of the Sacred Congregation, it is certain that the promulgation of the chapter *Tametsi* in a certain place can be proven not only through written documents, but also through presumption; for it is presumed that the decree was published where the decree has been observed in a parish as a decree of Trent for some time; Schmalzgrueber, book 4, title 3, paragraph 100, page 673. Indeed, long-standing observance of the chapter *Tametsi* not only implies its promulgation, but the very promulgation itself can be lawfully established through practice and long-standing custom, as derived from the resolutions of the Sacred Congregation itself; from the letter of Pius VII to the Archbishop of Mogunt, October 8, 1803, because in that custom, the law is contained, and its publication is not to be presumed, but rather is to be considered certain. Ibid. However, in England and Scotland, where Trent was not promulgated, it cannot be maintained that it was promulgated through the commendable custom by which good Catholics enter into marriage before the parish priest and two witnesses; because the Bishops, by whose mandate the promulgation of Trent must be carried out, do not understand that any promulgation of the chapter *Tametsi* is being carried out through that practice, which pertains more to the lawfulness than to the validity of marriages. Ibid. The observance of the Roman ritual concerning the Sacrament of marriage in each parish of the Diocese, observed as a decree of the Holy Council or the Supreme Pontiff, provides sufficient presumption of the promulgation of that same decree, so that in marriages, that decree must be observed for validity. Ibid. The law of Trent, which invalidates clandestine marriages, affects the inhabitants of the parish by reason of territory; and a part of the territory is not separated from the parish because the inhabitants of that part have defected from the Catholic religion; and therefore, if Catholics return to that part, they are bound by the law of Trent; just as Catholics would be bound in Rome who established a domicile in the Jewish ghetto. Ibid. It belongs to the Apostolic See to resolve general

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doubts concerning this matter.

[*Latin ed. p. 761*]

INDEX G concerning the promulgation of a decree. Although, or concerning the abrogation of the same through desuetude; the promulgation of the same decree pertains to the Bishops; and doubts, if they exist, should be removed for the future through a new promulgation, and certainly not through an interpretation, which in a general matter surpasses the authority of those same [Bishops], ibid. Invalid marriages, due to a defect in the Tridentine form, can be validated if both parties appear before the parish priest and two witnesses, and renew their consent, or if one party refuses to appear, the Bishop may be granted the power to validate the marriage at its root, page 674. The Mass, concerning its application. From the translation of the feast of St. John to the day of June 25th, carried out by the rubric, it does not follow that the faithful are bound to observe the feast day, nor are pastors of souls bound to offer the Mass for the people, page 152. For the rubrics concern the manner of celebrating the Mass and the office, but they do not define which are feast days of precept, nor how often pastors of souls are obligated to offer the Mass for the people; this is done by the canons or the constitutions of the Roman Pontiffs, page 153. The obligation to apply the Mass on the day on which the feast of St. John is transferred seems to be excluded by a principle of moral law, which states that one act can satisfy two precepts, if in that act whatever is prescribed by different laws is included, ibid. It is not without reason to say that this question is analogically defined by the Constitution of Pius IX, *Amantissimi*, in which it is decreed "that when the divine office, together with its solemnity, has been transferred to a Sunday, only one Mass is to be offered for the people." ibid. The conventual Mass is to be offered by all chapter members, whether canons or mansionaries, through alms, page 735. This alms for the conventual Mass is to be taken from the distribution for the Mass, if it exists; and to the extent that it does not exist, from the stipends paid by those who are absent, ibid. This rule is in force both in the case where the canons are absent for less than three legal months, and also if they are absent for more than the aforementioned three months established by law, ibid. The Mass, concerning its offering in pairs. An indulgence to offer the Mass in pairs is granted to the parish priest, who either has two parishes, or two populations so separated that one of them cannot in any way be attended by the parish priest celebrating on feast days, or when the population is so large that the entire population cannot come together in the parish church, p. 136. Offerings of the faithful. The offerings of the faithful, generally speaking, are to be converted into their intended use.

[*Latin ed. p. 762*]

7.62 INDEX GENERALIS refers to those to whom the intentions of the

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offerers are directed, since anyone freely giving and offering is the master and arbiter of their own things. 136. And this is especially true when it is a question of alms for Masses, concerning which the Decree of Urban VIII, issued on June 21, 1625, prescribes that absolutely as many Masses should be celebrated as have been prescribed according to the amount of the assigned alms, ibid. Therefore, those who act otherwise do not fulfill their obligation, but rather gravely sin and are bound to restitution, ibid. Nevertheless, in virtue of an unforgettable custom, since it brings about the efficacy of the Apostolic privilege, such offerings can be used for other pious purposes, because things given by laypeople to the Church, with the burden of celebrating Masses attached, cease to be lay and pass into the dominion and power of the Church, which has supreme, general, and free power over things, for the purpose of ecclesiastical ends, ibid. The sacrifice of the altar is indeed infinite in itself, because, as far as substance is concerned, it is the same as the sacrifice of the Holy Supper and the Cross; however, it is finite in effect, if God so wills, ibid. It is forbidden by law to demand anything for the administration of spiritual things, but nowhere is it forbidden to receive what is freely and spontaneously offered. Indeed, this second custom is called a praiseworthy right, and it is expressly commanded to be observed and maintained, ibid. To receive something for the sacred thing itself is forbidden by divine law, which cannot be nullified in any way. But to receive something for that which is ordered to the sacred thing, or is in some way connected with it, such as, for example, material removed for some sacrament, or accidental labor for its administration, is forbidden only by ecclesiastical law, which can be abolished by legitimate custom, page 137. The Order of Jerusalem, with regard to exemption from the titles of protonotary, royal chaplain, etc., or those otherwise attached to monasteries, are entirely subject to the Bishops, as delegates of the Apostolic See. page 59. However, those are exempt from their subjection, who serve churches or other places, or military orders, and who reside within their walls and houses, and live under their obedience, ibid. Or those who have legitimately and according to the rule of those same military orders made their profession; but with the condition that it must be reported to the Bishop, ibid. And such conditions or qualities pertaining to the Religious Order of Saint John of Jerusalem are preferred not disjunctively, but cumulatively.

[*Latin ed. p. 763*]

INDEX G: Those who are subject to INDEX G are required, in order to enjoy the exemption. Ibid. Hence, families of those serving the aforementioned Religion, or those who manage property, and tenants residing in houses belonging to the aforementioned Religion, do not enjoy this exemption. Ibid. A chaplain of a parochial church must be approved by the Ordinary for the administration of the sacraments. Ibid. The Prior of the

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Order of Jerusalem cannot disregard the dispositions of the Bishop concerning these matters, in which the Bishop has jurisdiction over Regulars by common law, by the most holy Council of Trent, and by Apostolic Constitutions. Ibid. Parochial priest: He who holds a dignity in cathedral and collegiate churches, and to whom the care of souls is entrusted outside the city, within the diocese, is considered present in the cathedral and collegiate churches for the time that he resides in and administers the parish. Page 24. Therefore, if, at the time that divine services are celebrated, he hears confessions or performs other duties pertaining to the care of souls, he is entitled to daily distributions, even if they are not directly related to divine matters. Ibid. A canon or beneficiary of a cathedral or collegiate church, to whom a habitual care of souls is entrusted, is exempt from deductions for the time that he fulfills the burden of the care of souls. Ibid. It is not otherwise; even if the one entrusted with the care of souls can be removed at the will of another, Ibid. Indeed, the aforementioned canon, or any other member of the chapter, while performing the office of a parish priest, is considered present in the choir, so that he may receive daily distributions, even if the habitual care does not reside with the chapter, provided that the parish is established in the cathedral or collegiate church. Ibid. However, an exception must be made in the case where the chapter, residing with the care, has entrusted the management to one of the canons, for a fixed salary. In the early centuries of the Church, in every diocese, there was one church or parish to which all Christians, not only of the city, but also of neighboring towns, flocked on Sundays, and the Eucharist was distributed to those present, while to those absent it was sent by deacons. Page 91. This church, which was the cathedral, was presided over by the Bishop himself, who had his own senate or presbyterium, that is, priests devoted to him, whose duty it was to assist the Bishop in the governance and administration of the church. Ibid. As the number of the faithful increased, other smaller churches were founded, which were not separately attached to a priest, but clergy were sent from the church by the Bishops each Sunday to administer them. Page 92.

[*Latin ed. p. 764*]

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Villages and towns, situated away from the city, in order to satisfy the just needs of the faithful, in the 4th or 5th century; in cities, however, in the 11th century, the first parishes, or districts of the faithful, were established, consisting of a church and a specific, stable, and particular priest; so that at that time, the pastoral office of the Bishops was restricted to only the district surrounding the Cathedral, which was therefore often called the cathedral or episcopal parish, ibid. But with the passage of time, even this district was entrusted to the care of a particular person, and in Cathedrals, according to

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the more accepted opinion, it was the archpriest of the chapter, who, as a born vicar of the Bishop, according to the title "De Officio Archipresb." in the Decretals, retained both the habitual and the actual care. ibid. Although it does not contradict, nor does the Council of Trent absolutely condemn, entrusting the care of souls to several individuals; nevertheless, it is more in conformity with common law that a single pastor be established in each parish, ibid. The office of a pastor sometimes belongs to someone completely and in full right; at other times, only in a habitual and not in an actual sense. ibid. He is said to have only a habitual care, who, in fact, does not exercise it, nor is able to exercise it; but he can and must, to some extent, provide that it be exercised through someone under the title of vicar, ib. A habitual pastor is not a true pastor; for the true pastor is not he who does not minister to the faithful the things that pertain to the care of souls, not only not by virtue of his office, but who also does not have the right to minister, but such a title is valid only for preserving certain rights for him. ibid. According to common law, strangers and travelers are to receive the sacraments and are to be buried by that pastor within whose parish boundaries they die. page 105. Nevertheless, in this matter, much must be deferred to custom, and to the particular customs of each place, ibid. In accordance with this custom, it most often happens that strangers and travelers, who briefly reside in a certain place, if they die there, receive the sacraments in the cathedral church and are buried there, while the pastor of the parish, within whose boundaries they died, if they had resided there for some time, ministers to them, ibid. Such a custom must be constant, certain, and peaceful, so that it may operate as described. ibid. In case of doubt, one must stand with the pastor, for whom common law speaks, and who has a well-founded intention regarding the spiritual assistance and funerals of those who die within the limits of his parish. ibid. The right to associate the bodies of deceased faithful in hospitals, which are not exempt, belongs to the proper...

[*Latin ed. p. 765*]

INDEX (Generalis): Concerning the parish of the domicile of the aforementioned deceased, page 209. For those who are received into a hospital, either for the purpose of receiving the last sacraments or for the restoration of their health, come there; and they do not lose their proper parish priest in a hospital that is not exempt, ibid. Therefore, the parish priest can pass through another parish, with his stole and cross raised, in order to carry and accompany the bodies of his deceased, ibid. Parish. It is commanded by the Council of Trent that bishops, for the safer salvation of the souls entrusted to them, should divide the people into certain and proper parishes, and assign to each one his own permanent and particular parish priest... from whom alone may they lawfully receive the sacraments. page -k%l. Therefore, parishes must be distinguished with the best of rights, and pas-

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tors must be appointed to each, endowed with all parochial rights, who may take care of their respective flocks, so that those who are subject to them may lawfully receive the sacraments and other divine things, without serious inconvenience, ibid. Since the salvation of souls is the supreme law, the present and real needs of the people must be attended to, and it must be noted that spiritual jurisdiction is not a private possession, but a concession of superior authority, granted for the good of the faithful; and that it may be taken away by the superior, notwithstanding any judgments or agreements by which it may have been sanctioned, whenever the public good requires it, ibid. The division of parishes and the erection of new ones may be done whenever the good of souls demands it, or whenever it is shown that there are serious reasons for carrying it out, ibid. Pensions. It is the received opinion that a bishop can, by his ordinary right, impose a life pension on a titular beneficiary; provided that there is a just cause, the consent of the beneficiary himself, and that the income of the benefice, if it is a parochial one, exceeds the sum of one hundred guilders of Trent. Session 24, chapter 13, paragraph, ad haec. And the pension must not exceed one-third of the fruits. page 558. It is permissible for bishops to impose pensions on benefices within their diocese on a titular beneficiary for a time, because the pension is imposed on the person, and not on the benefice; and the benefices are not thereby divided, since the person, and not the benefice, is burdened with this obligation, which does not bind the successor in the benefice, ibid. Those who are burdened with such a pension, provided the aforementioned requirements are met, are entirely bound to pay the burden that they have voluntarily undertaken, even according to the principles of law — for what has once pleased must always please — so I have agreed with you — etc. ibid. For burdens and obligations that have been duly imposed and freely accepted, cannot be rejected or annulled.

[*Latin ed. p. 766*]

INDEX GENERALIS 766. It is required, however, that the Bishops, who often prepare [liturgical celebrations] with a clear and proper purpose, or the Bishop, being aware of the obligation, but whose economic condition, due to the perversity of others in his diocese or due to his own family, does not allow him to properly manage affairs, testify that they will not have [liturgical celebrations] at the appointed time. Processions. Since the Bishop is the primary authority in all matters within the diocese, it is not permitted to anyone, except the Bishop, to announce public supplications, or to define their order, place, and purpose. page 124. This is not supported by any ancient custom; for it cannot be entrusted to the private judgment of anyone what concerns the public good. page 124. Neither can the cathedral church compel the clergy of subordinate churches, which are legally subject to it, to participate in processions and other solemnities; and much less can a mother church or a parish church, even though other churches may be

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said to be subject to it by reason of territory. page 124. Regarding this matter, it is not sufficient for the Bishop himself to testify generally that he does not hold the sacred ordination outside the established times. page 365. A contrary custom is absolutely not admitted, but is considered a corruption that would undermine the discipline of the Church. page 365. Res Judicata. A res judicata is held to be true, so that no proof is admitted against it, even under the pretext of newly discovered evidence. page 91. Therefore, restitutions [to a previous state] must be granted with great caution, lest lawsuits be drawn out indefinitely and res judicatas vanish. Universities. Regular clergy concerning ordination. A regular [cleric], lacking a special privilege, who can be promoted to the sacred orders by any Catholic Bishop, but who possesses another privilege to receive the sacred orders outside the times established by common Church law, can be ordained by a foreign Bishop. page 364. It pertains to the diocesan Ordinaries, by their own and natural right, the care, visitation, and reformation of universities, which are not immediately subject to the protection and reformation of the Roman Pontiff. page 691. Likewise, these same Bishops are responsible for the amendment and constitution of [universities], insofar as they are worthy of correction.

[*Latin ed. p. 767*]

INDEX Concerning matters of correction and improvement for the advancement of religion and ecclesiastical discipline, see above. The prescription, or the duty of visiting and correcting, concerning universities, is directed by the Council of Trent, chapter 2, session 25, only to Bishops; this is indicated by the reason of the context, and by many other things, see above. If the Council of Trent had wished to speak of Kings and Princes, it would have named them, as it did in other cases, both for the sake of decency and reverence, and for the greater effect of the law, see above. It is clearly in accordance with the constitution of the Christian society itself that the authority of visiting and correcting, with regard to studies, is entrusted to the Bishops; this is also gathered from the fact that the Church has the right to regulate theological and canonical disciplines, the institution of which has held a prominent place in Universities, page 692. Therefore, while princes may exercise only a certain external authority for the protection of religion, it is proper for the pastors of the Church to be vigilant so that errors do not creep in, to propose what must be believed and practiced, and to prohibit falsehoods, see above. For the magisterium of the Church comprises two parts: one positive, for teaching the truth, and the other negative, for preventing or avoiding errors. Since young people in schools must not only be instructed in secular learning, but also be imbued with Christian principles, it is the natural duty and right of Bishops to oversee the teachers, and even to remove them if they pervert Christian doctrine, see above. Civil authority, in maintaining the integrity of Christian doctrine in Universities, can exercise a subordinate and subsidiary vigilance, but by

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no means a direct and exclusive, or cumulative, or one with equal jurisdiction to the Church, see above. Utensils. It is commonly received that all and each who hold benefices and other perpetual chaplaincies are subject to a tax for utensils, so that they may compensate for some sum which the Church suffers by the use of sacred utensils when celebrating Mass, page 306. For such a tax, which does not affect occasional Masses, a tenth of a libra is now established by the Holy Congregation of the Apostolic Visitation in the decrees of foundation for each daily Mass celebrated, page 137. Parish Vicar. The vicar is not called the rector, nor is he the spouse of the Church, holding that title by his own right, but rather he is called a servant or minister, deputed.

[*Latin ed. p. 768*]

768 GENERAL INDEX: Regarding the status pertaining to the exercise of authority by the rector, as that individual is called, who possesses habitual care, page 23. According to the Constitution of Pope Pius V, the designation of the parish vicar is reserved to the chapter, if he possesses habitual care. Ibid. The designation of the parish vicar, by the chapter, is a certain indication that habitual care pertains to the chapter, page 93. In the absence of the designation of the parish vicar and other indices soon to be cited, the archpriest of the Cathedral possesses care, both habitual and actual; but in a Collegiate church, the actual care pertains to the archpriest, while the habitual care remains with the college, ibid. The reason for this distinction lies in the fact that the archpriest in a Collegiate church acts as the head of the college and not as a parish priest, and he exercises care in the name of the college, as if he were its head; but the archpriest of the Cathedral is responsible for the exercise of care within that same Cathedral, and thus he is considered a parish priest there, ibid.

IMPRIMATUR: Fr. Raphael Pierotti, Order of Preachers, S.P.A., Master.

IMPRIMATUR: Julius Lenti, Patriarch of Constantinople, Vicegerent.

c A

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